KASHMIR
ARTICLE
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M.K. Teng

Article 370 of the Constitution of India is widely debated issue.

In accordance with the special provisions embodied in Article 370 of the Constitution of India, the Jammu and Kashmir State was exempted from the application of the provisions of the Constitution of India dealing with the States in Part B of its First Schedule. In Part B of the First Schedule were listed the erstwhile princely States, which had acceded to the Dominion of India, but which had not merged with any province or had not been reorganised into Centrally Administered Areas. Provisions were incorporated in Article 370 for the institution of a Constituent Assembly in the State to draw up its Constitution. No other provision of the Constitution of India except Article I was made applicable to Jammu and Kashmir.

The powers of the Parliament to legislate in regard to the State were limited to the matters which were declared by the President of India, in consultation with the Government of the State, to correspond to the stipulations of the Instrument of Accession.

An interesting aspect of Article 370 was that it envisaged a perpetual Constituent Assembly in the State, at least, so long as the transitional provisions remained on the Statute Book.

Article 370 did not vest any constitutive power in the hands of the President, nor did it vest any such power with the Constituent Assembly of the State.

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PREFACE

The Indian federal organisation evolved, partly as an expression of the quest for Indian Unity, the struggle for freedom in India underlined, and partly as a process of the distribution of political authority among the constituents of the Indian Dominion, which was brought into being with the termination of the British Colonial rule in India. The over-riding consideration, which determined the course of federalisation in India was the anxiety of the founding fathers of the Indian Constitution to integrate the Indian Provinces and the Indian states into an inseparable political unity and accomplish the devolution of power to allocate an independent sphere of authority to its constituents, Provinces as well as the States.

The founding fathers did not recognise any subnational boundaries which divided India, into the denominations of the federal structure, they devised. The Provinces and the States, were cultural, linguistic and religious pluralities, and their political boundaries did not synchronise with any specific subnational gradients.

The one exception to this principle, adopted by the framers of the Indian constitution, was the special position, the Jammu and Kashmir state was accorded. The Jammu and Kashmir state was recognised as an autonomous identity, based upon the Muslim majority character of its population. The State was not brought within the process of the integration of the Indian princely States, which followed their accession to the Dominion of India. The representatives of the Jammu and Kashmir state, participated in the deliberations of the Constituent Assembly of India, but the National Conference which formed the Interim Government in the State, favoured the exclusion of the State from the constitutional organisation of India. Consequently special constitutional provisions were embodied in Article 370 of the Constitution of India for the State. The state was reserved the right to convene a separate Constituent Assembly

was convened in 1951. In November 1956, it completed the task of framing the Constitution of the State. The Consutution of the state was brought in to force on 26 January 1957.

The Jammu and Kashmir state has ever been governed by two sets of constitutional provisions, the first envisaged by the constitution of India state. The position of the state, in the Indian constitutional organisation has been determined by the constitution of India and the instruments of the State Government have been devised by the constitution of the state.

The present study is aimed to trace the process of federalisation which led to the integration of the Indian States into the Indian Union and the inclusion of special provisions for the Jammu and Kashmir state. Since Jammu and Kashmir presents a variant of the federal structure in which the Indian States were welded, the present study is expected to provide a perspective for the future evolution of the federal frames which the founding fathers of the Indian constitution constructed. In recent years, there has been an insistent emphasis on the recognition of subnational diversities of India as components of the Indian federal system. The present study which is focussed on the analysis of the placement of Jammu and Kashmir, as a subnational identity in the Indian federal system, reveals much and can serve as an indicator for any reconsideration of the federal relations, between the centre and the states in India.

The author is indebted to the keepers of the Jammu and Kashmir State Archives Jammu, keepers of the sapru House Library, New Delhi, and the keepers of the Jawahar Lal Nehru Memorial Museum, Library, New Delhi. The author is thankful to Dr. Sukhbir Chowdhry of the Indian Council of World Affairs, Sapru House, New Delhi, Shri T.C. Mor and Shri Surinder M. Talwar, for their valuable help.

Mohan Krishen Teng

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Chapter I

Indian Federalism

The Indian federal polity grew out of two diametrically divergent processes which underlined the devolution of authority to the provinces, in what was known as the British India before the independence, and the integration of the Indian States, which had acceded to India in accordance with the Instruments of Accession. The Instruments of Accession envisaged the procedure by virtue of which the Indian States, after the British withdrawal from India and the lapse of Paramountcy, exercised the right to accede to the Dominion of India. The federal organisation of India was, therefore, constituted of the erstwhile Indian provinces of the British India and the Indian States which were liberated from the British tutelage after the British colonial organisation came to its end in 1947.

The federalising process in India underlined a combination of the devolution of authority to the provincial governments on the one hand and the integration of the acceding States on the other. The Constituent Assembly favoured a conditional devolution of the powers to the provinces. The Rulers of the States, however, on their part too, approved of a conditional transfer of authority to the Government of India'. Initially the Rulers of the States acceeded to the Indian Dominion and delegated to the Government of India, powers mainly related to the foreign affairs, defence and communications and generally hoped that the federalisation of the States would be confined to almost the same prescriptives which the Paramountcy underlined. The Constituent Assembly proved to be a great leveler and forged the provinces and the States into an irreversable union in which the Central Government assumed paramount authority

over the provinces as well as the States. The provinces had nothing to bargain with, except the plurality of their population, their culture and their history, which the Indian leaders, singed by the partition, refused to accept as the basis of the federal reorganisation of India. The princely States too, did not possess a coherent personality to resist the federal operatives, the Constituent Assembly evolved. They were peripheral salients of the British colonial organisation in India and had never enjoyed any powers except the ceremonial and the splendour the British allowed them and the authority they were given to collect revenues in order that the coffers of the British Government were adequately filled and they had enough to squander.

The scheme of the division of powers between the Central Government and the federating States, which the Constituent Assembly evolved, envisaged:

(i) uniform political status for all federating units, provinces and the acceeding States, except Jammu and Kashmir;

(ii) statutory division of powers between the federal government and the States;

(iii) precedence of the federal government over the federating units in matters of legislation, administration and finance;

(iv) unified national, judicial structure vested with original jurisdiction to adjudicate upon disputes between the States and the Union and exercise power of review; and

(v) a single citizenship with uniform rights and obligation for all the people of India [2].

Princely States

The Constituent Assembly of India, for some time during its deliberations, recognised the right of the Indian States, many of which had merged into Unions of the States, to devise the structural organisation of their governments and their autonomous function. It was accepted that the States and the Unions of the States would institute their own Constituent Assemblies to draw up the constitutions for their Governments.

The State Ministry constituted a special Committee in November, 1948, shortly after the draft Constitution of India was introduced in the Constituent Assembly to lay down broad guidelines for the Constituent Assemblies of the States and the Unions of the States in order that the Constitutions of the States were based upon uniform principles and these principles did not conflict with the constitutional organisation of the Republic. The Committee was constituted of two members of the Constituent Assembly K.M. Munshi and Govinda Menon and four representatives of the States in the Constituent Assembly, Ram Sahai from Gwalior, K. Hanumanthaya from Mysore, R. Sarkar of Travancore and C.C. Shaw of Saurashtra. B. N. Rao, the Constitutional Advisor to the Constituent Assembly was appointed the Chairman of the Committee. The Committee drafted a model constitution, more or less based upon the provisions of the Constitution of India envisaged for the provinces or what the draft constitution named the part A States, for the State Constituent Assemblies to adopt. However, the process of instituting the Constituent Assemblies in the States was slow and except for the Sarurashtra States Union, Travancore-Cochin and Mysore, Constituent Assemblies of the States were not convened. The Interim Governments instituted in the States, faced several problems of integration and liberalisation and the convocation of the Constituent Assemblies was bound to take a long time.

To overcome these difficulties the States Ministry convened a conference of the Premiers of the States and the Unions of the States in Delhi in 1949. The Conference of the Premiers decided not to wait for the institution of the Constituent Assemblies in the States and instead proposed to entrust the task of framing the state constitutions to the Constituent Assembly of India. The Constituent Assembly of India, it was decided, would draw up the State Constitutions in consultations with the States and with the consent of their governments.

The decisions taken by the Premiers conference bridged the differences which were inherent in the plan to have seperate Constituent Assemblies for the States. In one respect the decision to entrust the task of framing the State Constitutions to the Constituent Assembly of India, was historic and revolutionary, for it portended the delegation of the constitutive powers of the Princes to the Constituent Assembly which the Rulers had, earlier, refused to accept.

Consequently an Official Committee was set up in the States Ministry, to suggest amendments to the provisions of the draft constitution of India in the light of the agreements with the States and the recommendations of the Premiers Conference. The recommendations of the Committee were submitted to the Drafting Committee of the Constituent Assembly, which later, drew up the constitutional provisions for the States. The draft provisions were then sent to Sarurashtra, Travancore-Cochin and Mysore, where they were considered by the respective Constituent Assemblies of these States and accepted with minor modifications. The draft constitution was also sent to the other States and the Unions of the States for their consideration. All the State Governments accepted the draft provisions, except the Jammu and Kashmir State. After the States gave their concurrence, the Drafting Committee moved necessary amendments to the draft constitution of India to incorporate in it, the constitutional provisions with regard to the States. According to these provisions,

(i) the States were included in the First Schedule of the Constitution of India which defined the territorial jurisdiction of the Indian Union;

(ii) the constitutional provisions with regard to the Governor's provinces, which were renamed as Part A States, were made applicable to the States which had merged in the provinces as well as the States reorganised in the Chief Commissioners provinces which were renamed as Part C States;

(iii) the constitutional provisions with regard to the government of the Part A States, were made applicable to the States of Hyderabad, Madhya Bharat, Patiala and East Punjab States Union, Rajasthan, Sarurashtra, Travancore-Cochin and Vindhya Pradesh with certain modifications and these States were renamed Part B States;

(iv) the provisions of the Constitution of India with regard to the legislative relations between the Union and the Part A States were made applicable to Part B States and Part C States;

(v) the provisions of the Constitution of India with regard to the administrative and financial relations between the Union and the Part A States, were made applicable to Part B States;

(vi) the Part B States were placed for a period of ten years, or such period as the Parliament would by law provide, under "the general control of the President of India" and were required to "comply with such particular directions as the President would give from time to time; and

(vii) the remaining provisions of the Constitution were also made applicable to Part B and Part C States.

The amendments to the draft constitution placed all the States within the purview of the Constitution of India. Whereas the draft constitution placed the erstwhile Governor's Provinces of the British India in a special category of Part A States, the Princely States were classified in two special categories : Part B States and Part C States. The heads of the Part B States were redesignated as Rajpramukhs, and all of them were nominated from amongst the erstwhile Maharajas and Nawabs. The Maharaja of Jammu and Kashmir and the Nizam of Hyderabad were also appointed the Rajpramukhs of their States. Special provisions were included in the draft constitution for the payment of allowances and other monies to the Rajpramukhs. Provisions were also incorporated in the draft constitution by virtue of which the State armies of the Part B States were placed under the control of the President of India. Since it was bound to take some time for the State troops to be absorbed in the Indian army, control over the State troops, for the transitional period was vested with the Rajpramukhs.

The provisions of the Constitution of India with regard to the States were sweeping. In many of the States, interim Governments were instituted, relegating the Princes to the background; many of whom, had, in case of merger with the provinces or integration with other States, lost the initiative they had used during the British rule. In fact, many of them quickly realised that with the withdrawal of the British, their power and privileges were lost and the real powers in the States had passed to the representative Interim Governments. In most of the States, the Rulers, turned for inspiration and support to the States Ministry, and were, therefore, eager to implement the suggestions made to them by the latter.

The federalising process in India envisaged a political unity which recognised the political identity of the States but consolidated them into integral parts of a political personality which expressed the will of their

people rather than the agreements which the States had executed to join the Indian Dominion. The founding fathers of the Indian Constitution did not recognise the States as subnational identities, nor did they visualise the division of powers in the Indian federal organisation, between the central government and the federating units, which represented any ethnic, cultural, religious or linguistic subnationalities in India. This could not be possible, because India presented a highly intricate complex of numerous subnational identities which could not be identified with any political boundaries or administrative limits. The political boundaries of the Indian provinces and Princely States, as they had evolved with the British consolidation in India, overspread ethnic, religious, cultural and linguistic diversities. The British recognised the divisions in the Indian people, and deepened the social, cultural, religious and linguistic differences which divided them but they did not link the manifold plurality of the Indian social culture to the political consolidation of their power in India. They broke up all political entities, which represented any subnational identity, the Muslim potentates, the Marhattas, the Rajputs and the Sikhs and reorganised them into administrative divisions which were territorial in character and were inhabited by people who did not coincide with any ethinic, cultural, linguistic and religious limits. The British followed a policy of consolidation in India, which dissolved the traditional political boundaries, identified with ethnic, religious and cultural conglomerates. The Indian uprising of 1857, represented a reassertion of the various ethnic, cultural and religious identities against the political unification the British had initiated. That was precisely the reason because of which the uprising failed; the diversities which the revolt represented could not be forged into a solid front against the British power.

The British colonialism in India led to the reorganisation of land tenures and revenue administration; destruction of indiginous industrial structure, mobility of men and material, the imperial interests demanded; spread of communications and the emergence of a mercenary middle class with vested interests transcending the conventional commitments of the people in India to their culture, religion and stock. The Indian plurality survived but subservient to the political operatives of the British empire, except in channels which the British themselves devised like Muslim communalism, separate electorates, regional segments etc. The Indian social pluralism did not describe any political boundaries. The ethnic divisions, religious commitments, caste gradations and cultural

diversities cut across the political boundaries, the British described creating inumerable intelocking political segments. None of the interlocking segments described uniformity and territorial contiguity. The Sikh empire was broken up and the Punjab, the heart of the Sikhs State, transformed into a Muslim majority province of the British India. The Jammu and Kashmir States was created by the unification of the ethnically, culturally and linguistically separate regional identities of Jammu, Kashmir and the frontier divisions of Ladakh and Baltistan. The Muslims in India, who laid claim to a subnational identity, did not form a coherent territorial unity and the Punjab and Bengal were broken up to separate the Muslim majority areas into contiguous zones and then united with Sind, Bluchistan and North West Frontier Province and the Sylhet division of the province of Assam, to form the Muslim nation of Pakistan. About thirty million of Muslims in India were left out of the Muslim homeland and more than fifteen million of Hindus and Sikhs were pushed out of it. Except for their religious commitments, the Muslims in India did not form a subnational identity with any defined content and contours. The founding of the Indian federation was the culmination of a historical process which began with the consolidation of the British power in India and ended with the creation of Pakistan.

The founding fathers of the Indian Constitution inherited a unified political culture, encompassing vastly diverse subnational pluralities. The federating process, they evolved, accepted the territorial and political basis of Indian unity, the British had assiduously fostered. The Constituent Assembly at no stage, sought to identify Indian federal divisions with any subnational diversities. It could not do so because the subnational diversities did not have any social, territorial or political description and it was not possible to forge them into federating units on the basis of their subnational personality.

The people of India, who constituted the Union, were recognised as one and an indivisible nation, with a single citizenship of the federal union and the States, entitled to the same rights and obligations, and subject to a uniform process of law.[3] No people in any state were accorded separate citizenship and title to any special rights and privileges. The territorial unity of India was described within a single jurisdiction. The territories of the Indian republic were defined by Article 1 of the Constitution of India in its First Schedule. The boundaries of the federating States were subject to the territorial jurisdiction of the republic

which was vested with the power to alter the boundaries of a State, form new federating units by separating a part of the territory of a State or parts of the States or by uniting two or more States or parts of States and increase or decrease the area of the States.

State Autonomy

The framers of the Indian Constitution, did not unite national and subnational identities into a federal form which they named the Republic of India, but effected a devolution of central authority to the Indian provinces, which were administrative units of a unitary structure of power, the British had forged to govern India. The accession of the Princely States to the Dominion of India was also, not only a part of their integration into the Indian federal republic but a part of the historical process of the Indian unification which began with the partition and ended with the merger of the States in the Indian Dominion. The Princely States, were, like the provinces, administrative organisations, the British had forged to govern the Princely India. The Treaties between the Princely States and the British, the Sanads which were bestowed on the Princes spread into the vast sweep of Paramountancy, but did not accord the Princely States any political independence. When the Paramountcy ended the States were shorn of the recognition they had assumed under the British and emerged as territorial jurisdictions which were subject to the imperatives of Indian unity and not independent of it. The British refused to recognise their independence and allow them to enter the British commonwealth and no other foreign power accepted to accord to them the position the British had refused. The framers of the Indian Constitution did not abandon the administrative basis of the division of powers between the Central Government and the provinces in British India and the delegation of authority embodied by the Paramountcy.

The framers of the Indian Constitution were as much concerned about the division of powers, as much they were about the future organisation of the federal government and the government in the federal units as well as the liberty and freedom of the people, individually and collectively. The colonial organisation of the Government of India and the governments, in the provinves, were closed frames of power instruments which accepted no responsibility. The founding fathers of the Indian Constitution had a selective preference for the acceptance of parliamentary sovereignty and the collective responsiblity as the basis of

the future federal government as well as the governments in the federating States.

Whatever the considerations that weighed upon the mind of the framers of the Indian Constitution, they adopted three basic principles tc construct the Indian federal union. These principles were :

(i) constitutional supremacy of the Union over the federating units;

(ii) the precedence of the authority of the Union over the States in the federal division of powers; and

(iii) the containment of the federal organisation within the limits of parliamentary sovereignty.

The constitutional imperatives which ensured the precedence of the Union, included the territorial jurisdiction of the Union, a unified citizenship, uniform rights and obligations of all the people in India, a unitary national administrative organisation; financial devolution, with the Union as the epicentre, powers of the Union to deal with emergencies including the emergencies arising out constitutional breakdown in the States and the right of the Union to appoint the State Governors.

The division of powers, between the Union and the States, was embodied in an elaborate scheme, in which the legislative, administrative and financial powers of the Union Government and the State Governments were enumerated in detail. The Constitution also specified a concurrent area of jurisdiction between the Union and the States, with precedence ensured for the Union. The powers vested with the Union Government were enumerated in the Union List of the Seventh Schedule appended to the Constitution of India. The powers reserved for the States were detailed out in the State List and the powers within the concurrent jurisdiction of the Union and the States were included in the Concurrent List of the Seventh Schedule. A significant feature of the distribution of powers, the Indian federal structure envisaged, was the reservation of all residuacy powers for the Union Government.

Within the broad framework of the division of powers, the Constitution of India envisaged, the States were vested with powers which were derived from the Constitution and were not liable to be taken away except

in accordance with the procedure laid down by the Constitution. The powers vested with the States were plenary but not inherent. The Constituent Assembly did not recognise any inherent powers in the Indian provinces which constituted the Indian Dominion or the States which acceded to the Indian Dominion. The powers vested with the Union and States were restricted to their respective limits which were specified by the Constitution.[6]

Notwithstanding the clear demarcation of the legislative, administrative and financial powers of the Union and the States, the founding fathers of the Indian Constitution ensured the precedence of the Union over the States in the scheme of the division of powers it envisaged. The Union was secured control over a wider sphere of state power. Powers were vested with the Union Parliament to legislate in regard to the subjects included in the State List:[7]

(i) if the Council of States declared, by a resolution, supported by two-thirds of the majority of its members, present and voting, that such legislation was in the national interest;

(ii) if the legislatures of two or more States empowered the Union Parliament to legislate on the subjects in the State List in respect of the States;

(iii) if the Union Government found it necessary to legislate on the subjects in the State List to implement treaty obligations undertaken by the Government of India.[8]

The Union was also vested with the powers to legislate in respect of the subjects in the State List, in case of emergencies arising out of war, external aggressions or internal disturbance and the constitutional breakdown in the States.

Precedence was also ensured to the Union in case of conflict between the laws made by the Parliament and the laws made by the State Legislatures on subjects in Concurrent List or the subjects enumerated in the Union List or the State List. In case of any inconsistency between the laws made by the Union and the States, the laws made by the Union prevailed and the laws made by the State were rendered void to the extent of the repugnancy to the central law.

In respect of administrative relations as well, though the States were reserved administrative competence over the entire field over which their legislative powers extended, the founding fathers of the Indian Constitution devised techniques which ensured administrative precedence over the States. The Constitution of India provided that the executive power of each State would be so exercised so as to ensure complete compliance with the laws made by the Parliament and any existing law in force in the State. The Constitution further empowered the Union to give such directions to the States as would appear to the Union Government to be necessary for that purpose. The Union Government was also vested with the powers to issue directions to the State Governments to remove any obstacles or difficulties for any Union agency to function in the States. The Union Government was also empowered to issue special directions in the construction and maintenance of the means of communication of national and military importance and the protection of the railways. The Constitution provided that full faith and credit would be given to the public acts, records and judicial proceedings of the Union in all parts of the country. The Constitution further vested in the Union Government powers to deal with waters of inter-State rivers and river valleys as well inter-State dispsutes. Provisions were also included in the Constitution by virtue of which the President could declare a state of emergency in the States and take over the government of the States, if the States failed to comply with or give effect to any direction given by the Union Government.[9]

The concentric nature of the federal division of powers was made more manifest in the financial relations between the Union and the States. The powers of the Union Government and the State Governments to levy taxes were separately defined and made mutually exclusive. No area of concurrent jurisdiction was demarcated between the Union and the States, though provisions were made to empower the Union to levy and collect taxes and share certain taxes with the States. In the allocation of the financial sources between the Union and the States, the Constitution of India classified the exclusive Union sources, the exclusive State sources, the duties levied by the Union, but assigned to the States, the duties levied by the Union but collected and appropriated by the States, and the duties levied by the Union and distributed between the Union and the States.[10]

The division of financial powers underlined by the Constitution envisaged two distinct schemes: the division of powers to levy taxes and the distribution of revenues. The Union and the States were empowered to levy taxes within the orbit of their competence to tax but the division of revenues was subject to the principle of their needs and requirements. Thus certain taxes included in the Union List were wholly or in part intended for the States and in certain cases their collection was entrusted to the States. The net proceeds assigned to the States were distributed among them on the principles recommended by the Finance Commission.

In the scheme of the division of financial powers, the distribution of the revenues was made in favour of all the States uniformly. However, due to regional disparities and economic stresses the financial needs of some of the States were adjudged more pressing than that of the others. In order to meet exigencies arising out of the regional and economic disparties; the Constitution provided for a system of Grants-in-Aid to the States, chargeable on the consolidated fund of Inida. The Grants-in-Aid were provided for the States in addition to the assignment of various tax proceeds including those shared with the Union Government. The Grant-in-Aid were actually the final balancing instruments of the resources of the States which their manifold functions, particularly in the fields of social utilities and services were needed. The Parliament was empowered to make the grants every year to the extent deemed necessary. The grants were to be fixed in accordance with the recommendation of a Finance Commission, for which the provisions were made by the Constitution of India. The Finance Commission was to be appointed by the President every five years to advise the President on the distribution of revenues between the Union and the States, Grants-in-Aid to the States and any other financial matter referred to the Commission by the Parliament.[11]

In the division of financial powers between the Union and the States as well, the Union was ensured precedence over the States. The Union Government was unmistakably entrusted with very wide powers to tax the sources, which by nature were substantial and uniform. The financial structure of the federation did not accept unqualified reciprocal immunities of instrumentalities between the Union and the States. Several prohibitions were imposed on the power of the States to levy taxes on the Union activities. The immunity accorded to the States, was subject to a number of restrictions. Infact, with their dependence on the federal

grants, the States were in reality, a shadow of the autonomy, the Constitution of India apparently envisaged.

The founding fathers of the Indian Constitution placed the federal organisation of India within the confines of the parliamentary responsiblity. In a parliamentary structure the devolution of authority is vertical in contrast to the horizontal decentralisation of power in a federal division of powers. All parliamentary governments underline the precedence of the parliament and its right to make laws, subject them to its review and amend the constitution. In a parliamentary form, the division of powers, judicial supermacy and separation of powers, the most essential imgratients of a federation, are subordinated to the paramountcy of the parliament.

The founding fathers of the Indian Constitution sought to combine the two principles: Judicial supermacy, without which no federation would survive and Parliamentary sovereignty which could not be concieved except in terms of parliamentary responsibility. The acceptance of the paramountcy of the parliament left the evolution of the constitutional imperatives in India within the purview of the Indian Parliament and not the Indian judiciary. In the United States, the evolution of the federal relations was determined by the judiciary and the Supreme Court of the United States widened the implied authority of the federal government to ensure its precedence in the American federal structure. In India the process was accomplished by the Parliament, not by widening any area of implied powers, but by subordinating the States to its plenary authority to make law and repeal it. The parliamentary supremacy and judicial precedence are irreconcillable and inherent conflict between the parliament and the judiciary in India did not take long to precipitate. Ultimately, however, the paramountcy of the Parliament prevailed.

Sub-national Autonomy

Indian federalism did not represent the division of political authority on the basis of distribution of powers between the federal authority and subnational identities. It was based upon the division of political authority which was not related to subnational pluralities in India and which underlined the integration as well as the autonomy of political power in a concrete political system. The Indian federal organisation was embeded in an environment which was culturally plural and diverse, but its

boundaries were clearly defined, and did not overlap with the cultural, linguistic or religious pluralism of the Indian society.

The Jammu and Kashmir State alone involved a variation of the federal principles the Constitution of India envisaged, as it symbolised a federal relationship which was based upon the recognition of special political identity of the State for its Muslim majority character.

Jammu and Kashmir too, like the other Indian Princely States did not represent a subnational identity except that the Muslim formed a dominant majority of its population. The people of the State, among them the Muslims as well, constituted an ethnic, cultural and linguistic plurality which was scattered over three main regional divisions: Jammu, Kashmir, and the frontier division of Ladakh and Baltistan. The province of Jammu was dominatly Hindu; the people spoke various dialects of Punjabi and other Pahari languages, and belonged to the Sanskrit Aryan stock. The people of Kashmir, were predominantly Muslim with a small minority of about six percent Hindus and Sikhs, by and large, forming a cultural homogeneity and sopke Kashmiri and several dialects of Pahari. The frontier division of Ladakh and Baltistan, was geographically a part of the Tibetan tableland, and constituted two distinctly different ethnic, cultural, religious and linguistic denominations: the Tibetans inhabiting the district of Ladakh and the Baltis and Dardis, inhabiting the districts of Ballistan, Gilgit and the Dardic dependencies of the Jammu and Kahsmir State. The people of Ladakh were of the Mongolian stock, professed Buddhism, spoke variants of Tibetan and constituted a part of Tibetan culture. The people of Ballistan were Muslim, mainly Shiite, spoke Balti and various dialects of Dardic and were akin to the cultural patterns of the Dardic principalities of Central Asia, some of which formed the dependencies of the State.

When the Constitution of India was framed, the National Conference claimed a separate political identity for the State on the basis of the Muslim majority character of its population. The institutionalisation of political power on the basis of the recognition of the Muslims of the State, as a subnational identity, a principle which the Constitution of India did not recognise in respect of any other religious denomination, had deep and wide repercussions on the evolution of the political personality of the State and its relations with the rest of the country. The implications of the recognition of religious subnationalism as a factor of federal relation-

ships, were deep for the entire federal system of India and the autonomy of the States and in due course of time exposed the inherent dangers in subjecting federal division of powers to subnational pluralism. Within a short time the quest for Muslim precedence came into sharp conflict with the religious, minorities inside the State, as well as the secular operatives of the federal government. Evidently federalisation, as it was conceived for Jammu and Kahsmir, provided a mechanism for the protection of the religious denomination of the Muslims in the State which claimed a separate cultural identity and a specific vested interest in its sociology on the basis of geographical distribution of power. The recognition of the separate identity of the Muslim majority in the State, however, subordinated the Hindus, Sikhs and the Buddhist to the operatives of Muslim precedence. The autonomous authority of the State, based upon Muslim subnationalism resulted in the establishment of an oligarchical domination over the minorities and other weaker sections of the State's population.

The conflict between the imperatives of Indian secularism and Muslim subnationalism was deeper. In less than two years, the conflict came to surface and the National Conference swung to a position, where it sought to establish a balance between the Indian federal authority and the subnational autonomy of the State which in effect purported to secure the State, a position outside the federal organisation of India. In 1953, the State Government was dissolved, and fresh federal operatives evolved to govern the relations between the State and Centre. However, the basis of the new federal operatives too, continued to remain committed to the Muslim subnationalism of the State.

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10. Ibid Part. XII.
11. Ibid.

Chapter II

Integration of States

The Indian Princely States, which formed peripheral salients of the British colonial organisation in India, were liberated from the British tutelage in 1947, when the British quit India and the powers of Paramountcy they exercised over the States, suffered dissolution. The British withdrawal was accompanied by the partition of India and the creation of a separate Muslim state of Pakistan, constituted of the Muslim majority provinces of Sind, North-western Frontier province, Baluchistan, the Muslim majority districts of the Punjab and Bengal and the Muslim majority division of Sylhat in Assam. However, the Indian States were not subject to partition of India, and were left out of it as well as liberated from the operatives of Paramountcy which governed their relations with the British and the Government of India. The lapse of Paramountcy involved the dissolution of the obligations the British carried out in regard to the States and the powers the British Crown exercised over them and the British Government did not transfer Paramountcy to any of the successor States in India, but resorted them to the Princes. The Prime Minister, Clement Attlee, told the Parliament on the eve of the Indian independence:

> As was explicitly stated by the Cabinet Mission His Majesty's Government do not intend to handover their powers and obligations under Paramountcy as a system to a conclusion earlier than the date of the final transfer of power, but it is contemplated that for the intervening period the relations of the Crown with the individual States may be adjusted by agreement.

However, though the transfer of power underlined the reversion of all the rights and powers of the Paramountcy to the Rulers of the Indian States, the British Government did not accept to recognise the States as independent dominions in India and declined to undertake any obligation which the Paramountcy entailed. Option was left open to the Princes, by explicit stipulations incorporated in the provisions of the partition scheme, to accede to either of the two dominions or enter into such agreements among themselves or with the Dominions as they would determine. Evidently the partition plan provided for the States, what the British termed "technical independence" to remain out of the political organisation, the creation of the two Dominions envisaged; but the Act did not stipulate their independence; nor did the British Government accept to recognise them as independent dominions and take upon itself any obligations which the Paramountcy underlined. The British Government did not visualise the partition of the states on the basis of the division of India but separated them into political identities which would neither be recognised independent nor be presumed to form a part of the two dominions of India and Pakistan.

Both the Congress and the Muslim League did not accept that States were not subject to partition and separation of Muslim India but they interpreted the partition scheme in diametrically different ways. The League took the position that the Princes were vested with the independence and paramount power to exercise freedom in respect of accession or independence in spite of the fact that British refused to recognise the States as independent dominions in India. The Congress on the other hand refused to countenance the independence of the States and emphasised that the people of the States alone could determine the future disposition of the States in respect of their accession.

> The Muslim League accepted the implied doctrine of freedom of action for the Princes, probably because the few States on the Pakistani side of the border would have no real choice. Moreover, the exercise of such freedom by some of the large Princely States in India, notably Hyderabad, would imperil the territorial integrity and stability of Pakistan's more powerful neighbour. For precisely opposite reasons the Congress rejected the British Government's interpretation of Paramountcy and declared that it would resist territorial fragmentation.

The All India Congress Committee, which met in Delhi on June 13, 1947 strongly protested against the vivisection of India, which the withdrawal of Paramountcy would spell out. The Committee adopted a resolution, which rejected the British and the League interpretation of the lapse Paramountcy and claimed that the relations between India and the States could not be allowed to be adversely affected by the lapse of Paramountcy. The Committee refused to recognise the right of any State to declare its independence and live in isolation from the rest of India[1].

Apart from what the British Government had in its mind in regard to the Indian States, most of the British officials in the Government of India, spared no efforts to encourage some of larger States to assume independence. The State Department took the position that the Indian States were bound to the British Crown by the instruments of paramountcy, but were otherwise completely independent and owed no allegiance to the British India. After the Paramountcy lapsed, the State Department maintained, the Princes would resume the powers which were exercised over them by the British Crown and would be within their rights to assume fullfledged independence.

Many of Princes were eagerly waiting to see if they could use Pakistan as a counter-weight against India and with whatever help they could secure from the British, remain out of the future constitutional organisation of India. Bhopal was preparing to declare itself free, the moment the British withdrew from India. Hari Singh of Jammu and Kashmir, waited patiently for an opportunity to establish an independent State. The Nawab of Hyderabad was fiercely opposed to the Congress and the Indian National movement and there was hardly any doubt about what he was determined to do. He tried frantically to pursuade Mountbatten to get the eight thousand troops of the Indian army removed from his State. Sir William Monckton, the Nizam's Legal Advisor wrote to Lord Ismay on 22 June 1947:

> The State has been pressing the Political Department for the removal of the Indian army troops from our cantonements. There are 7,000 or 8,000 Indian Army fighting troops in the State including armed formations. The Nizam thinks it quite intolerable that they should remain here after the 15th of August. They would in effect be an army of occupation. But such pressure as the

> Political Department has been able to exert has been quite ineffective. Whether the Defence Member is stalling or not, I don't know; but it does look as if those who will form the Government of the Indian Union would not be unwilling to find themselves with an army of occupation here. I spoke to Commander-in-Chief about it and he said that we should have nothing to worry about while he was directing the army. This is cold comfort.
>
> The Crown Representative is still the Crown Representative and he could direct the Government to take steps to move the troops out of State territory by the 15th August.

In view of the intention of the British to close down the Political Department of the Government of India, which dealt with the States, it was decided to set up a new department, called the "States Department" to deal with the matters concerning the States.[2] The Department was instituted on 27 June 1947, and was divided into two sections, the Indian Section and Pakistan Section. The Indian Section was headed by Sardar Patel and the Pakistan Section by Abdul Rab Nishtar of the Muslim League. Nishtar, immediately after he assumed office, conveyed to the Princes that Pakistan would accept whatever terms they laid for their accession to Pakistan and in case they were prepared to accede to Pakistan, support them in their bid to assume independence. The League leaders sent several emissaries to Hari Singh inviting him to accede to Pakistan on the terms he would specify, and assured him of their support if he decided to assume independence.

As the transfer of power began to draw close, a conference of the Rulers of the States was convened in Delhi on 25 July 1947. Mountbatten, who addressed the Rulers for the last time in the capacity of the Crown Representative, advised them to accede to the appropriate Dominion in respect of three subjects-defence, external affairs and communications. He assured them that their accession on those three subjects would not involve any financial liability and that in other matters there would be no encroachment on their sovereignty. Finally he appealed to them to join either Union before 15 August 1947.

Before 15 August, all the Indian States except Junagarh, and two

States of Jammu and Kashmir and Hyderabad, acceded to the Dominion of India. For Jammu and Kashmir and Hyderabad, the offer of accession was kept open even after 15 August. The Maharaja of Kashmir offered to sign a standstill agreement with both the dominions of India and Pakistan. Pakistan accepted the standstill agreement but India advised the State Government to send its accredited representative to negotiate the terms of the agreement. No agreement was reached with Hyderabad and on 12 August, the Nizam of Hyderabad was informed by the Viceroy that the offer of accession would remain open for a further period of two months.[3] The Maharaja of Kashmir was upturned, when Pakistan attacked his State in October, 1947, after which he acceded to India. The Indian troops entered Hyderabad in 1948, and the accession of the State to India was finally accomplished.

Jammu and Kashmir

The Jammu and Kashmir State was founded in 1846, after the Sikhs were defeated in the first Anglo-Sikh war and the territories of Sikh empire situated between the rivers Sutlej and Sind and including Jammu, Kashmir, Hazara Chamba and the frontier divisions of Ladakh and Baltistan were transferred to Gulab Singh, a Dogra Rajput chieftain of Jammu and a feudatory of the Sikh empire. The first Anglo-Sikh war broke out in December 1845, when the Sikhs crossed the Sutlej river to fortify their frontiers around which the British had begun to entrench themselves. The Sikhs fought with reckless bravery, but divided by internecine strife, commanded by decript officers and betrayed by their leaders, suffered successive defeats in various engagements they had with the British.[4] The most decisive battle of the first Anglo-Sikh war was fought at Sobraon where the Sikhs were finally beaten.[5]

As a prize for their victory, the British demanded from the Sikhs, the territories situated between rivers Sutlej and Bias and a war indemnity of one and a half crore of rupees. The Sikhs agreed to surrender the territory the British claimed, but refused to pay the indemnity. Instead they offered to cede additional Sikh territories to the British situated between Bias and the river Indus, including the provinces of Jammu, Kashmir, Hazara, the divisions of Kulu, Mandi, Nurpur, Kangra and Chamba, and the frontier regions of Ladakh and Baltistan. The British, reluctant to commit themselves on a vast and unfriendly frontier, decided to transfer the territories, the Sikhs offered to cede, to Gulab Singh on the condition

that he made good the indemnity on behalf of the Sikhs.[6] Gulab Singh with a view to carve out a kingdom for himself which would be secured by the British, readily agreed to enter the bargain. The British retained the important divisions of Kulu, Mandi, Nurpur and Kangra and in consideration of that reduced the sum of the indemnity to only one Crore of rupees and transferred the rest of the territories the Sikhs had ceded, to Gulab Singh in independent possession. The transfer of territories was formalised by the Treaty of Amritsar which was concluded between the British and Gulab Singh on 16 March 1846. Hazara proved far too turbulent for the Dogra chief to hold and he exchanged it with an equal extent of territory situated east of Jehlum in Jammu.[7]

The Dogra State formed a complex alignment of regional, cultural and linguistic diversities as the different regions of the State, Jammu, Kashmir, Ladakh and Baltistan were geographically, ethnically and culturally disparate countries, which had no common history, language and cultural affinity. Jammu spread into a cluster of Rajput principalities ruled by Dogra potentates was brought under the Sikh sway in 1808, when the Sikhs reduced the Jammu kingdom. Kashmir, an ancient Hindu state and ravaged by viccisitudes of history was wrested by the Sikhs from the Afghans in 1819. The regions of Ladakh and Baltistan, mainly a part of the Tibetan table land and inhabited by Buddhists and Shiaie Muslims were annexed to the Sikh domains by Gulab Singh in 1837.

The administrative organisation, Gulab Singh instituted in the State, was in no way different from the administrative structures which the British forged in the other native States of India. The princely States were the outer citadels of the British colonial empire in India possessed little of the nativity they claimed. "They were protected proteges of the British colonialism and their power and prestige was secured by the Government of India. The Sanads, treaties and agreements on which the Indian States' structure was based were in content, commitments to a subordinate alliance with the British".[8] In the provinces, the British endeavoured to establish administrative instruments which were aimed to consolidate the basis of the British empire in India. In the native States the Princes were allowed to rule within the reaches described by the British to serve the interests of the empire, fill the coffers of the Company and provide sanctuaries for the British adventurists who arrived in India in search of fortunes and future.

The province of Jammu and the frontier divisions of Ladakh and Baltistan were not centres of much industrial activity, but the province of Kashmir was the hub of the shawl manufacture, which had yielded enormous revenues to the Sikhs. The capricious Muslim Khojas, who owned the industrial establishments of shawl manufacture in the province, imported shawl wool from Chanthan in Tibet across Ladakh and exported the finished Pashmina shawl products, and employed labour on indenture paying in advelorum duty on the sale proceeds of their manufactures. Gulab Singh left the industrial possessions of the Khoja manufactures intact along with their right to employ indentured labour.[9] He, did not change the terms of the monopolies in trading and import of shawl wool which he had wrested from the Ladakhis and left the export of the finished shawal products in the hands of the Khojas who enjoyed a monopoly in shawl exports.

Like the other Indian States, Jammu and Kashmir too formed the backyard of the British colonialism in India. The Treaty of Amritsar was a subordinate alliance by which the Dogras pledged to recognise to British suzerainty over their State. Whateversemblence of independence, the Dogras had, was rapidly lost by them after the Second Anglo-Sikh War, when the Sikh State was finally broken up and the Punjab was annexed to the British territories in India. Gradually the Dogras were integrated into the Indian Princely order and brought within the grinding operation of the British Paramountcy. In 1889, Maharaja Pratap Singh, Gulab Singh's grandson and the third Dogra ruler in succession, was set aside by the Government of India on charges of misgovernment and incapacity and the State Government was placed under the direct supervision of the British Resident in the State.[10] The helpless Maharaja, confined to his palace, imploringly wrote to the Governor-General :

> "If after a fair trial being given to me, I do not set everything (excepting the Settlement Department, which is under the guidance of Mr. Lawrence, and which will not be settled within five years) right, and am found not to rule to the satisfaction of the Supreme Government, and my people within the prescribed time, Your Excellency's Government is at liberty to do everything that may be considered advisable. In case this liberty is not allowed to me by the Supreme Government, and I have to remain in my present most miserable condition, I would most humbly ask, Your Excellency to summon me before you and I will be most

> happy to obey such summons and shoot me through the heart with Your Excellency's hands, and thus at once relieve an unfortunate prince from an unbearable misery, contempt and disgrace for ever.[11]

Having assumed direct control over the State, the British Government reorganised the entire administration of the State on the basis of the departmental organisation they had introduced in the Indian provinces and the other Indian States. The departments were placed in charge of officers, mostly English and drawn from the Home Department of the Government of India. The heirarchical order of the State administration was also restructured on the pattern, the British had evolved to govern India. Authority percolated down from the Resident and the petty officials at the lower rungs of the administration licked the mud, and collected the graft and blackmail to pass it up to the magistracies over them, the provincial governors, the ministers and the Resident.

Besides the administrative reorganisation, the British changed the traditional social balances which formed the basis of the Dogra power. They reorganised the agrarian relations the Dogras had inherited from their predecessors, introduced a permanent settlement of land revenue on the model they had followed in the Punjab, and recognised permanent occupancy rights of the land holders who undertook the payment of a fixed land rent. They abolished the monopolies the Dogras assumed over trading, rationalised taxation and resumed the right to grant concessionary rights, exploitation of forests, exploration of minerals and permit imports, liquidating the manifold class factions which formed the bedrock of the Dogra economic organisation. They did not interfere with the shawl industry, by then in decline, and left the Khoja owners of the smouldering shawl manufacturing factories untouched. They had already wrested the monopoly in the import of shawl-wool from the Maharaja.[12]

A factoral change, the British brought about in the State was the introduction of English education and the institution of schools and colleges on the basis of English curricula. The English education, imperceptibly uprooted a generation from its traditional moorings and catapulted it into a new universe of intellectual experience. Though recast into masses of mercenaries to serve the British empire, many of them were pushed into progressive social roles and community leader-

ship. These people became the harbingers of the Indian rennaissance in the States, where the dimensions of political repression and social backwardness were more pronounced than in the Indian provinces.

Indian Renaissance

The Indian national renaissance evoked widespread response in the State and brought it into the vortex of the liberation movement in India. The civil disobedience movement, which rocked India in 1919, led to severe reaction in the Jammu province of the State, from where thousands of volunteers went to the Punjab to join the civil disobedience movement. The Khilafat movement followed with greater fury, and spread to the entire State, particularly the Kashmir province, where the Muslims joined the Khilafat agitation in large numbers.

In 1931, the Muslims, who formed a predominant part of the population of the State fell into a headon collision with the Dogra rule. Many factors were responsible for the Muslim resurgence. Muslims, particularly in the Kashmir province, considered the Dogras aliens and usurpers and had right from the time the State was founded, given ample expression to their distrust against them. The Muslim disaffection was considerably aggravated by the abuse of power and exploitation which characterised the Dogra rule. As a part of the Indian princedom, the Dogras were in no way better than the rulers of the other Indian States. The contributory factors which deepened the Muslim unrest, were, the traditional British hostility towards the Dogras and the pan-Islamic irridenticism which swept the Punjab in the aftermath of the Khilafat.[13]

The disturbances in the State evoked serious repercussions all over the Punjab and a part of North Western Frontier Province and Sind. Muslim political factions, in the Punjab, jumped into the fray in order to exploit the situation in the State. Aharar volunteers, in thousands, marched in the State to help their Muslim brethren. "Kashmir Committees" supervised by a Central Kashmir Committee headed by Sir Mohammed Iqbal, were constituted all over the Punjab to direct efforts to organise, help and support for the Muslims in the State in their struggle against the Dogras.

Hari Singh tried his utmost to obviate the British intervention, which he was sure, would follow if the situation in the State did not improve. He

changed his policy and offered to look into the grievances of the Muslims and mitigate them and actually a temporary suspension in the Muslim agitation was achieved. However, peace did not last long and agitation restarted with added vehemence. The Government of India sent a peremptory note to the Maharaja asking him to appoint a commission headed by a British officer of the Government of India to inquire into the Muslim grievances, introduce administrative reforms in the State Government which would provide the Muslims a wider State patronage and appoint a British officer of the Government of India, the Prime Minister of the State. Hari Singh waited for sometime, but finally yielded. The British troops were despatched to Jammu with quick expedition to quel the riots and bring the situation under control in the province. An Ordinance was promulgated by the Government of India to prohibit the entry of Ahrar volunteers into the State. Large number of Ahrars were arrested and imprisoned. A British officer of the Government of India, E. J.D. Colvin, was appointed the Prime Minister of the State. A Commission of Inquiry, headed by another British officer of the Government of India, who had served in the State in various capacities, was instituted to enquire into the grievances of the Muslims. A Constitutional Reforms Conference, which too was headed by B.J. Glancy, was also appointed to recommend measures of reforms in the State Government.[14]

The Muslims, hopeful of utilising the British influence against the Dogras, withdrew the agitation and settled to cooperate with the Commission of Inquiry and the Constitutional Reforms Conference. The deliberations of the Commission of Inquiry and the Constitutional Reforms Conference were protracted and the Muslim agitation gradually subdued.

In November 1932, the Muslims called a general convention in Srinagar to which delegates were invited from all over the State. On the final day of the three-day convention, the 'Muslim Conference' was founded. Sheikh Mohammad Abdullah, who had directed the Muslim struggle against the Dogras, was elected the President of the Conference. The Conference committed itself to :

(i) organise the Muslims and secure them their due rights;

(ii) struggle for their economic and cultural uplift; and

(iii) deliver them from the oppression they were subjected to.[15]

National Conference

The take-over of the State Government by the British in the wake of the Muslim agitation, utimately brought the Muslims to a dead end. In due course of time they found the British were now the virtual masters in the State. The support, the Muslims had received from the Muslims in Punjab also wanted mainly because the British patronage, British inspiration and patronage, the Muslims in the Punjab had received to rise against the Dogras had also ceased. The Muslim leadership did not take long to realise that the Dogras were an adjunct of the British empire in India and any struggle against them was inconceivable except within the context of freedom from British dominance. The elections and the formation of the Congress Ministries in the British Indian Provinces in 1937, inspired the Muslim leadership to break out of its religious moorings and with the active support of the Hindus and Sikhs, who had opposed the Muslim agitation vehemently, founded a broad based and secular movement for political emancipation of the people of the State. In 1939, the All Jammu and Kashmir Muslim Conference was converted into a secular political party. The Muslim leaders amended the Constitution of the Muslim Conference, renamed it as the All Jammu and Kashmir National Conference, modified its objectives and threw its membership open to all the people of the State.[16]

The National Conference committed itself to a secular struggle for Indian freedom, the realisation of a political India comprising the British Indian Provinces and the Indian States and institution of self-rule in the States. The Conference affiliated itself to the All India States' Peoples' Conferences, which spearheaded the liberation struggle in the Indian States.[17]

The National Conference conducted a vigorous campaign in the State for the institution of self-government and constitutional reforms. However, it was plunged into a crisis when the Muslim League adopted the Pakistan resolution in March 1940. The League resolution envisaged the reorganisation of the Muslim majority provinces in India into a separate and independent Muslim State of Pakistan. A large section of Conference leaders and ranks, mostly from Jammu, advocated the

acceptance of the League resolution for Pakistan on the plea that the Muslims in the State formed a part of the Muslim India and, therefore, their aspirations were bound with the creation of Pakistan. The Conference rejected the League resolution and the leaders and cadres who advocated the acceptance of Pakistan resolution abandoned the Conference.[18]

On 13 June 1941, the break-away factions of the National Conference, revived the erstwhile Muslims Conference. Chowdhry Gulam Abbas was elected the President of the Conference. In the open session of the Conference, Abbas called upon the Muslims in the State to support the League demand for Pakistan.

In 1943, Maharaja Hari Singh appointed a high power Commission to investigate into the working of the government and recommend measures for reform and the introduction of administrative responsibility. All the political organisations were invited to participate in its work. The appointment of the Commission created an atmosphere of optimism in the State and all the political organisations including the National Conference, agreed to participate in the deliberations of the Commission. The Muslim Conference was not given any representation in the Commission and the Working Committee of the Conference gave a call to the Muslims in the State to boycott the Commission.[20]

The deliberations of the Commission were not smooth. Differences set in among the participants of the Commission on a wide variety of matters and the Commission failed even to evolve an agreement on the interpretation of its terms of reference. The National Conference submitted a long memorandum to the Commission which envisaged the institution of responsible government in the State, weightage for minorities, recognition of civil liberties, and the economic uplift of the backward people of the State. Soon however, the Conference withdrew its representative from the Commission and presented a revised version of the memorandum it had submitted to the Commission, to the Maharaja. Later the memorandum was adopted by the Conference as its official manifesto and published under the name of 'Naya Kashmir'.[21]

In October 1944, Hari Singh announced by a proclamation, that he had decided to appoint two ministers from among the members of the Praja Sabha, the State Legislative Assembly, which was instituted in

1934, in the aftermath of Muslim agitation in the State. Most of the political organisations accepted the scheme which was erroneously called Dyarchy. As a consequence of the implementation of the proclamation Maharaja Hari Singh appointed Mirza Afzal Beg the deputy leader of the National Conference parliamentary party in the Praja Sabha and Wazir Ganga Ram from Jammu. Beg was entrusted with public works and Ganga Ram was put in charge of Education.[22]

Dyarchy did not admit of any measure of responsibility and suffered from severe defects. No sooner the two ministers stepped into their office, the defects of the scheme came to surface. After the war came to its end, the policies of the State Government suffered a subtle shift. Dyarchy came to its end in March 1946, when Mirza Afzal Beg resigned from his office in protest.[23]

These were the critical days when the Indian independence was on the anvil. When the Cabinet Mission arrived in India, the National Conference submitted to it a long memorandum which repudiated the right of the Princes, to represent the stat es and demanded that the people in the States be allowed to participate in the Constitution making bodies in India, which the Mission proposed. "At a time", the memorandum stipulated "when the new world is being built on the foundations of the Atlantic Charter, a new perspective of freedom is opening before the Indian people, the fate of the Kashmiri nation is in the balance, and in the hour of decision we demand our basic democratic right to send our elected representatives to the Constitution making bodies that will construct the framework of free India. We emphatically repudiate the right of the Princely order to represent the people of the Indian States or their right to nominate their personal representatives as our spokesmen"[24] The memorandum evoked no response from the Mission.

In May 1946, the National Conference launched the famous 'Quit Kashmir' movement. Sheikh Mohammad Abdullah demanded the annulment of the Treaty of Amritsar, by virtue of which the British had founded the Jammu and Kashmir State. The Conference demanded the termination of the Dogra rule and the transfer of power to the people in the State. The State Government dealt with the movement with a stern hand. The Conference leaders were arrested and jailed and Martial law was imposed in the Kashmir province, where the 'Quit Kashmir' movement evoked widespread response. At many places the troops clashed

with the demonstrators and opened fire on them. The Congress leaders and the leaders of the States Peoples' Conference were disparaged at the development in the State and castigated the State Government for its indiscreet policies. Nehru sought to intervene and offered to visit the State to bring about a peaceful settlement of the conflict between the Conference and the State Government. The State Government refused to allow Nehru to enter Kashmir and on his way to Srinagar, he was served with a prohibitory order at Kohalla, the frontier outpost where the Srinagar-Rawalpindi road entered the State territories. Nehru refused to turn back and crossed into the State borders. He was promptly put under arrest and detained at a wayside station. The next day he was released and allowed to return to Delhi. The leaders and the cadres of the National Conference were arrested and sentenced to various terms of imprisonment. Within a month, the 'Quit Kashmir' movement was smothered.[25]

Independence to Accession

While the Dogras grappled with the 'Quit Kashmir' agitation changes of far reaching importance were on way in India. In February, the British announced their intention to leave India. In June, the Indian leaders accepted the partition. Besides the creation of two dominions India and Pakistan, the partition plan envisaged, that all rights and powers which the British exercised in regard to Indian States would revert to the States. The Princes were given the choice to determine their relations with the two dominions and accede to either of them or arrive at such arrangements with them as they deemed feasible. It has been noted above that the British refused to recognise the States as separate dominions and informed them that they would not be in a position to carry on any further obligations which the Paramountcy underlined. The States were to take a decision in respect of accession before 15 August 1947, the day fixed for the transfer of power.[26]

Inside Kashmir, the prospect of the British withdrawal appears to have left no impression on the mind of the Maharaja. The maharaja fondled with the hope of carving out an independent kingdom for himself and as the transfer of power became imminent, he sought to poise himself on the new political balances, which were beginning to take shape as a result of the British withdrawal.[27]

There is little doubt that Maharaja Hari Singh and the men who surrounded him, failed to realise the significance of the stupendous changes which the transfer of power involved. Most of them, devoid of any political foresight, could not visualise the effect, the dissolution of the British colonial organisation in India, was bound to have on the princely order in India. Hari Singh found it difficult to believe that the British would abandon the Princes even if they left India. To that extent the British officers in India and the Political Department of the Government of India, spared no efforts to assure the Maharaja. The Prime Minister of the State, Ramchander Kak followed his master with servile loyalty and though adequate evidence is not available to assess his role during those critical days, it can safely be said that he actively supported the Maharaja, a course which ultimately proved disastrous for both. In fact, the Maharaja and his Prime Minister, tried in their own way, to put the small weight they had, on the side of the Paramountcy, realising little that their policies would actually fling them into the oblivion.

The coterie of the court grandies was opposed to the adoption of a politically sound policy. The zest with which they had isolated the Dogras from the national mainstream for the fear that the transfer of power at national level would deprive them of their privileges, had completely blinded them. With thoughtless resignation they applauded the obstinacy the State Government demonstrated.

The Maharaja did not appreciate that his estates running over long stretches of mountainous territory, inhabited by less than four million people and with resources barely sufficient to sustain them, could not be organised into a viable independent political unity. The State, after it was constituted in 1846, had survived under the protection of the British Paramountcy. Effective instruments of control did not exist and the borders of the State stretched along the tactical frontiers of some of the most powerful nations in Asia. Major General H.L. Scott, an English official, who commanded the armies of the State, had under his command a few battalions of food troops to man the borders of the State. Scott was a glamorous oldman with much glittering steel in his deep eyes, but after all, the state could not be defended against foreign aggression by dramatics. Scott was under no illusions himself and he apprised the Maharaja of the inadequate military strength, the State had, to meet any threat from across the borders of the State. Scott, however, favoured an understanding with Pakistan and believed that if such an understanding was not

reached with that country the borders of the State would continue to be unsafe. He was summarily dismissed. In his place, a Dogra military official, Brigadier Rajender Singh was put in charge of the State army.

The Muslim Conference leaders exhorted the Maharaja to assume independence and pledged the support of the Muslim Conference to an independent State. The president of the Muslim Conference, Chowdhry Hamidullah assured the Maharaja of the "support and cooperation of the Muslims, forming an eighty percent majority in the State, as represented by their authoritarian organisation Muslim Conference". He promised Hari Singh that the Muslim subjects of the State would acclaim him as the first constitutional king of a "democratic and independent Kashmir".[28]

The Congress leaders pleaded with the Maharaja to join the Indian Dominion. Conscious of the difficult position the State Government was placed in, they advised the Maharaja to release the National Conference leaders, which in view of the predominance of the Muslims in the population of the State, was the only factor, he could depend upon in case he decided to accede to India. Towards the close of June, Gandhi announced that he would go to Kashmir. Nehru immediately offered to go to Kashmir before Gandhi did. Mountbatten, apprehensive of how Gandhi would advise Hari Singh, forestalled both Gandhi and Nehru and arrived in Srinagar on 29 June 1947. Mountbatten had several meetings with Maharaja Hari Singh and told the Maharaja that independence of the State was not a "feasible proposition".[29] However, he conveyed to the Maharaja that in view of the Muslim majority of the population of the State and its geographical conditions, accession to India would not be in the interests of the Maharaja. Hari Singh was shocked because he had seen what Pakistan had wrought in the Punjab and thousands of Hindus and Sikhs who had escaped from death had taken refuge in his State. Accession to Pakistan was the last act he was prepared to accomplish. He refused to open his mind to the Viceroy when the latter wanted to know what the Maharaja had decided about his future. He sought a meeting with the Maharaja the day he returned to the Indian capital, the Maharaja feigned illness and expressed his inability to talk to the Viceory. Moutbatten left the State high and dry.

In July, Patel wrote to Ramchander Kak, advising him to reconsider the policies the State Government had adopted and suggested to him to come to terms with the National Conference and then take a decision to join India without any further delay. Patel wrote to Kak :

> Do you think Sheikh Abdullah should continue to remain in jail ? I am asking this question purely in the interests of the State. You know my attitude all along and my sympathy towards the State. I am once again advising you as a friend of the State to reconsider the matter without any delay.[30]

Kak attended the meetings of the Negotiating Committee and Patel tried to persuade him to abandon the hard line the State Government had taken. Patel wrote to the Maharaja as well and almost implored him to join the Indian Dominion without any vacillation. He wrote to Hari Singh :

> I fully appreciate the difficult and delicate situation in which your State has been placed, but as a sincere friend and well wisher of the State, I wish to assure you that the interest of Kashmir lies in joining the Indian Union and its Constituent Assembly without any delay. Its past history and traditions demand it, and all India looks up to you and expects you to take that decision. Eighty percent of India is on this side. The States that have cast their lot with the Constitutent Assembly have been convinced that their safety lies in together standing with India.[31]

Patel, perhaps unaware of what had transpired between the Viceroy and the Maharaja, expressed his disappointment about the inability of the Maharaja to have met the Viceroy before he left Kashmir. He wrote :

> I was greatly disappointed when His Excellency the Viceroy returned without having a full and frank discussion with you on that fateful Sunday, when you had given an appointment which could not be kept because of your sudden attack of colic pain. He had invited you to be his guest at Delhi and in that also he was disappointed. I had hopes that we would meet here, but I was greatly disappointed when His Excellency told me that you did not avail of the invitation.[32]

Hari Singh found an ally in the Nizam of Hyderabad, who for almost different reasons sought to secure independence for his State. Hari Singh presumed that Pakistan would support him because that would forestall any action India took in Hyderabad. Pakistan was frantically trying to wean Hyderabad from India and to achieve that Pakistan could not take

a stand on Kashmir, which conflicted with their interests in Hyderabad. Hari Singh, also aware of the discomfiture India faced on account of Hyderabad, believed that the Indian leaders would not force him to take any action which would effect the future of Hyderabad.

Gandhi visited Kashmir in the last week of July. He met Hari Singh on the Gupkar Palace lawns in Srinagar. On 10 August 1947, Hari Singh dismissed Ram Chander Kak and appointed General Janak Singh, one of his close relations, the Prime Minister of the State. Two days later, the State Government offered to enter into a standstill agreements with both India and Pakistan. The agreement with Pakistan was concluded on 15 August 1947, but India neither accepted the standstill agreement nor rejected it and instead instructed the State Government to send a properly accredited representative to the Indian Capital to discuss the implications of the Agreement.

The standstill agreement between the State and Pakistan was short lived. In early September 1947, Pakistan organised massive infiltration of its agents into Mirpur and Poonch district, which were contiguous to West Punjab and predominantly Muslim. Both the districts flared up in revolt against the Dogras. Meanwhile, Pakistan imposed an embargo on the transit of supplies to the State and sealed off the two communication lines, which ran into Pakistan and linked the State with the outside world.

For sometime the State Government remonstrated with the Government of Pakistan but without any results. While Pakistan continued to build pressure on the State, the State Government withdrew the warrants against the National Conference leaders and cadres. The Acting President Conference, Bakshi Ghulam Mohammad directed 'Quit Kashmir', who has escaped arrest in May 1946, and who had directed the movement from outside the State reached Jammu on 6 September and arrived in Kashmir on 12 September, 1947. On 27 September, Sheikh Mohammad Abdullah was released from jail. This was followed by the release of the other National Conference leaders and cadres.

The National Conference leaders set out quickly to revive the organisational units of the Conference, wnich lay in ruins. The impact of the partition and propaganda war which Pakistan had unleashed against the National Conference and the movement for Indian unity, the Conference had led, was deep and wide. The Muslims in the Jammu province

clamoured for accession to Pakistan and most of them established clandestine contact with the Pakistani infiltrators. The Kashmiri speaking Muslims, committed to support the National Conference, looked upto Sheikh Mohammad Abdullah and the other National Conference leaders for a decision on the accession issue. The Conference leaders, avoided to commit themselves on the issue of accession, though they secretly conveyed to the Government of India that they had decided to support the accession of the State to India.[33]

Dwarka Nath Kachru, the Secretary General of the All India States Peoples' Conference, who attended a high level meeting of the top leaders of the National Conference in Srinagar, wrote to Nehru on 4 September 1947 :

> The position here can be summarised thus:
>
> 1. Sheikh Sahib and his close associates have decided for the Indian Union.
>
> 2. But this decision has not been announced yet and the impression is being given that so far the National Conference have taken no decision.
>
> 3. The leaders of the National Conference are in jail and only Sheikh Sahib has been released so far.
>
> 4. The stand taken by Sheikh Sahib is that the political prisoners must be released and the Working Committee and the General Council must be allowed to meet to consider the problem and to place their decision before the people.
>
> 5. Meanwhile Sheikh Sahib is delivering speeches to educate public opinion and to prepare the people for what seems to be the inevitable decision of the National Conference.[34]

Sheikh Mohammed Abdullah and the other Conference leaders demanded the transfer of power to them in order that they were able to fight communalism and carry Muslims with them. Kachru wrote to Nehru:

6. Sheikh Sahib feels that unless there is a transfer of power to a substantial degree the National Conference may find itself in a difficult position. To fight the League, to maintain law and order inside the State and to carry the masses with them, it is highly essential that a settlement with the National Conference should be brought about simultaneously with the accession of the State to the Union.

7. Alternative to the National Conference is undiluted Muslim communalism of the most militant type and the National Conference urges that it be taken into confidence and be closely associated with the government of the country.[35]

The Government of India realised the necessity of the transfer of power to the National Conference, which they knew could muster support among the Muslims in Kashmir for the accession of the State to India. Sardar Patel wrote to Meher Chand Mahajan, who had replaced General Janak Singh, as the Prime Minister of the State :

> I myself feel that the position which Sheikh Abdullah takes is understandable and reasonable. In the mounting demands for the introduction of responsible government in States, such as you have recently witnessed in Travancore and Mysore, it is impossible for you to isolate yourself. It is obvious that in your dealings with external dangers and internal commotion with which you are faced, mere brute force is not enough. We, on our part, have pledged to give you maximum support and we will do so. But I am afraid, without some measure of popular backing, particularly from among the community which represents such an overwhelming majority in Kashmir, it would be difficult to make such support go to the farthest limit that is necessary if you were to crush the disruptive forces which are being raised and organised. Nor do I think it will be possible to maintain for long the exclusive or predominant monopoly of any particular community in your security services. It is as necessary for you to treat those who are willing to cooperate with trust and confidence in respect of these services as in respect of others which are generally termed nation building departments.

Patel's letter despatched to Srinagar on 21 October, 1947. Ironically enough, during the following night Pakistan launched a heavy military offensive against the State and large contingent of armed invaders from Pakistan led by its regular forces, entered the State along the borders of Mirpur and Poonch districts in the Jammu province, and the district of Muzaffarabad in Kashmir province. The Muslim troops of the Dogra army, deployed with their Hindu compatriots almost all over the State borders which came under attack, deserted, murdered their officers and comrade-in-arms and went over to join the enemy. The remnents of the Dogra army, depleted and poorly equipped, offered dogged resistance to the raiders, who rolled on, like an avalanche, killing thousands of Hindus and Sikhs and destroying everything that fell in their way. Brigadier Rajinder Singh, who commanded the State forces directed the operations on the front in the Kashmir province and with an assortment of a few hundred troops held back the invading hordes till he laid down his life in the battle. Had it not been for the Brigadier and his gallant men, who earned a moments reprieve for the Maharaja, the story of the State would have been different.

Maharaja Hari Singh appealed to India for help and offered the accession of the State to the Indian dominion. The Government of India took long days to accept the accession of the State. On the morning of 27 October 1947, first contingents of airborne Indian troops landed in Srinagar. The same day the Indian troops began to arrive in Jammu.[36]

On 1 November 1947, the Gilgit Scouts, a local Muslim militia raised by the British for the defences of the Gilgit Agency revolted and declared the accession of the Agency to Pakistan. Major Brown, a British adventurer, who commanded the Scouts, hoisted the flag of Pakistan on the Agency quarters. Within days Pakistani troops poured into Gilgit and with the Muslim Scouts, swooped on Baltistan and Western Ladakh.

The Indian army pushed back the raiders and drove them out of a large part of the territories of the State occupied by them. However, with fresh reinforcement from Pakistan the raiders entrenched themselves in the districts of Muzaffarabad, Mirpur and Poonch, the Gilgit Agency and its Dardic dependencies and the greater part of Baltistan.

On 1 January 1948, the Indian Government appealed to the United Nations to ask Pakistan to withdraw its forces from the State. After

prolonged silence, Pakistan presented to the Security Council, a long list of counter complaints against India. The Security Council appointed a Commission to conduct an on-the-spot investigation of complaint India had lodged and the counter complaints Pakistan had made. Long and protracted mediation by the Security Council, brought round the two countries to accept a cease-fire in the State pending a final settlement of the dispute between them. Fighting was suspended in the State on 1 January 1949. A large part of the territory of the State remained under the occupation of Pakistan.[37]

Interim Government

Immediately after the accession of the State, the Indian leaders advised Hari Singh to associate the leaders of the National Conference with the Government of the State. The National Conference leadership had insistently asked for the transfer of power to the National Conference as a step towards the realisation of self-government in the State. On 30 October 1947, Hari Singh instituted an Emergency Administration in the State with Sheikh Mohammad Abdullah as its Chief Emergency Administrator and Bakshi Ghulam Mohammad the Deputy Chief Administrator.[38] The other leaders of the National Conference were appointed Emergency officers to deal with the situation which the invasion had created. A few of the Emergency Officers were appointed from among men who were not in the National Conference.

The Maharaja presumed that the Emergency Administration would function within the ambit of the authority his Council of Ministers earmarked for it and in subordination to the establishment of the Maharaja. The arrangement was bound to lead nowhere and deepen the sense of distrust between the Maharaja and the Conference leadership. On the one hand the Conference leaders were not vested with any purposeful initiative and on the other the Maharaja's ministry was hardly in a position to function effectively. The powers of the Emergency Administration were not defined nor was the orbit of its authority specified. As a matter of fact, there was a great deal of confusion in regard to its territorial jurisdiction. For a few days after the institution of the Emergency Administration, the Prime Minister of the State carrierd the impression that the Emergency Administration had been established to deal with the situation in Kashmir province alone.

Looking back, it is difficult to locate the reasons for which the Emergency Administration was instituted and the tasks it was expected to accomplish. The Indian leaders always suffered from an incredible lack of perspectives. Sheikh Mohammad Abdullah had insistently asked for the transfer of power to the National Conference but the Indian leaders did not provide for a settlement between the Maharaja and the National Conference in respect of the transfer of any measure of authority to the Conference leaders. The Emergency Administration, as it was constituted, was a shoddy structure, hardly equipped with the power and prestige to face the crisis in the State. The invaders, though on the retreat, were destroying everything that was still intact in the areas occupied by them. Scarcity was acute, all supplies were suspended and there was severe shortage of foodgrains, petrol and other articles of daily use in the State. Streams of Hindu and Sikh refugees, who had escaped death, poured into Srinagar and Jammu from the occupied areas. None of the factions of the State Government, the Maharaja's Council of Ministers and the Emergency Administration had the capacity to deal with such a situation on their own. Whereas the Maharaja's Ministers stood by helplessly watching the events, the Emergency officers, owing responsibility to none, abrogated unlimited authority to themselves and undermined the already impaired administrative apparatus of the State Government. The Conference complained loudly that the Maharaja was reluctant to part with any substantial authority and the Maharaja and his ministers protested that the Emergency Administration had usurped the authority which did not rightfully belong to it.[39]

In November, the Government of India advised the Maharaja to institute an Interim Government in the State with Sheikh Mohammad Abdullah as its head and the Prime Minister, on the basis of the model adopted in the Mysore. The Mysore model envisaged the formation of an Interim Government constituted by the leader of the popular party in the State with himself as the Prime Minister. The Mysore model reserved several subjects exclusively for the Maharaja and these included the Ruler and the Ruling Family, succession, privy purse and the prerogatives of the Ruler, State army, constitutional relations with India, the High Court and the appointment of the Judges, the Public Service Commission, Auditor-General, the protection of the minorities, the State legislature, elections, emergencies and all other residuary powers. The Mysore model also provided for the appointment of the Maharaja's Dewan as a member of the Council of Ministers to function as a link

between the Ministry and the Maharaja. Unfolding the proposals Nehru wrote to Hari Singh :

> We have agreed that the Interim Government should be on the model of Mysore. In Mysore the leader of the popular party was asked to choose his colleagues, he himself being the Prime Minister or the Chief Minister. The Dewan was also one of the Ministers and he presided over the meetings of the Cabinet. In following this precedent, Sheikh Abdullah should be the Prime Minister and should be asked to form the Government. Mr. Mahajan can be one of the Ministers and can formally preside over the Cabinet. But it would introduce confusion if Mr. Mahajan continues to be styled as Prime Minister. The Interim Government, when formed, should be in full charge and you will be the Constitutional head of that Government.[40]

The Conference leaders did not approve of the Mysore model. They rather demanded transfer of powers to the Conference without any reservations. The Conference leaders refused to accept the appointment of the Maharaja's Dewan to the Council of Ministers and his interposition between the Maharaja and the popular ministry and demanded the removal of Mehar Chand Mahajan from his office. Mahajan was appointed the Prime Minister of the State during the stormy days when Pakistan was preparing to annex the State. The Conference leaders further demanded the institution of a Constituent Assembly in the State which would frame a Constitution for the Government of the State.

Not long after Nehru's communication was sent to the Maharaja, fresh proposals in regard to the formation of the Interim Government were sent to him by Gopalaswami Ayangar, a minister in the Indian Government, who had appeared on the scene to negotiate a settlement between the Maharaja and the Conference leadership. Ayanagar was, at no stage, associated with the national movement in India or the Indian States but had served Hari Singh as his Prime Minister from 1937 to 1943, during the hey day of the British rule in India. He suggested to Hari Singh that while the broad frame within which the Interim Government would be constituted, would follow the Mysore scheme, certain modifications and adjustments were necessary to be made in the scheme to adapt it to the situation in the State and accommodate the objections raised by the National Conference leadership. He proposed that.:

(i) an Interim Government constituted of a Council of Ministers would be set up in the State;

(ii) Sheikh Mohammad Abdullah would be appointed the Prime Minister of the State and the other ministers would be appointed on his advice;

(iii) the provisions of the Mysore model to include a Dewan in the Council of Ministers would not be followed;

(iv) the Maharaja would not be reserved any powers but would be empowered to place restrictions on the function of the Council of Ministers by special direction in respect of certain matters of administration;

(v) the Interim Government would be responsible to the Maharaja.[41]

Maharaja Hari Singh conveyed his inability to accept the Ayangar scheme and insisted upon strict adherence to the Mysore model. He drew up fresh proposals for the institution of an Interim Government in the State, which reserved to him, powers in respect of his throne and family, constitutional relations between the State and the Union, High Court, Public Service Commission, State army, Audit, protection of the minorities, elections to the State Legislature, breakdown of constitutional machinery and residuary powers. Maharaja's scheme further envisaged the appointment of his Dewan to the Council of Ministers, which would be presided by him and the revival of the erstwhile State Assembly, the Praja Sabha, after fresh elections and its conversion into a Constituent Assembly.

The Maharaja's scheme was not approved by the Conference leaders. Ayangar made a few minor modifications in his plan and agreed to reconsider the reservation of certain subjects for the exclusive control of the Ruler. The wrangle was finally resolved and the Interim Government was instituted by a proclamation, which the Maharaja made on 5 March, 1948.[42]

Sheikh Mohammad Abdullah was appointed the Prime Minister of the State. The other member of the Council of Ministers were appointed

from among the other leaders of the National Conference. Bakshi Ghulam Mohammad was appointed the Deputy Prime Minister of the State. All the powers of the State Government, except those related to the Ruler, his family and his property, privy purse, succession, Jagirs, Private Officers and the religious endowment of the Dharmarth were vested with the Council of Ministers. The Council was to function on the principle of joint responsibility. The Council was also charged with the responsibility to convene a Constituent Assembly which would be elected on the basis of universal adult franchise and would draw up a Constitution for the government of the State.

After the institution of the Interim Government, the National Conference set out to assume control over the entire government of the State, showing scant regard to the powers reserved for the Maharaja. Hari Singh, unable to influence the course of events, closed himself in his palace in Jammu. "I have written", Patel wrote to Nehru, several letters to Sheikh Sahib about easing tension and improving relations but I regret to say that I have had no reply. From all accounts it appears that the arrangements regarding reserved and non-reserved subjects to which Sheikh Sahib had agreed in March last are being treated as a nullity and the presence of the Maharaja and the existence of the reserved subjects are both being ignored."[43] Neither Nehru, nor Patel, nor for that matter Gopalaswamy Ayangar attempted to remove the difference between the Maharaja and the Interim Government. "The Government of India had adopted a policy of wild commitment followed by half-hearted decisions and this had neither served the Maharaja nor carried the National Conference any further."[44]

Towards the summer, the National Conference changed its strategy and informed the Government of India that Hari Singh should be advised to abdicate and the powers, which he still exercised should be transferred to the Interim Government. "I am therefore constrained to aver once again", Sheikh Mohammad Abdullah wrote to the Prime Minister, "that the choice is finally between the Maharaja and the people and if the choice is not soon made, it might lead us into very serious trouble both militarily and politically. The only alternative", Sheikh Mohammad Abdullah added, "is that his highness should abdicate in favour of his son and that there should be no reservation whatsoever, in the administration of various subjects under the Ministers".[45]

In September, Sheikh Mohammad Abdullah publicly accused the Maharaja of obstructing the function of Interim Government. In a press conference, in Srinagar, the Conference leader criticised the existing constitutional arrangements in the State and demanded the removal of the Maharaja. The Press conference evoked a sharp rejoinder from the Home Ministry. Sheikh Mohammad Abdullah struck back harder and threatened to quit office, if the Maharaja was not removed and the powers of the government transferred to the Interim Government.[46]

This was the time when the Government of India was under heavy pressure in the Security Council, which had foisted upon it a resolution envisaging the dimilitarisation of the State and the plebiscite to determine its final disposition with regard to accession. Realising that the National Conference alone could muster support for India amongst the Muslims, the Indian leaders were hardly in a position to displease the Conference leaders. A decision, in which Sardar Patel concurred, was finally taken to advise the Maharaja to leave the state and appoint his son, Karan Singh, the Regent of the State.

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Chapter III

Article 370

When Maharaja Hari Singh acceded to India on 26 October 1947, he ceded to the Dominion Government, powers with regard to the subjects, the other Indian States had also delegated to the Dominion. The subjects were listed in the Schedule attached to the Instrument of Accession and included :

(i) military, air and naval forces of the Dominion, armed forces raised or maintained by the Dominion or maintained by the State operating with any of the armed forces of the Dominion, naval, military and air force works and the administration of the Contonements, arms, ammunition and explosives;

(ii) external affairs, treaties, and agreements with other countries, extradition, admission, emigration, expulsion of nationals, regulation of movement of the foreign nationals, pilgrimages to places outside India and nationalisation;

(iii) communications, posts and telegraphs, telephones, wireless, broadcasting and other communications, railways, shipping and navigation, admiralty jurisdiction, ports and port authorities of delimitation-ports, port quarantine, air craft and air navigation; aerodromes, air traffic, light houses, beacons, safety for shipping and air craft, carriage of passengers and goods by sea and air and police force of the railways;

(iv) Election to the Dominion Legislature, offences against laws with respect to any of the matters transferred to the Dominion of India,

inquiries and statistics with regard to these matters and the jurisdiction of all courts with regard to these matters.[1]

The Dominion Legislature was empowered to legislate in regard to the subjects, which were listed in the Schedule. Maharaja Hari Singh assumed the obligation to ensure that due effect was given to the instruments of the Dominion Government applicable in the State by virtue of the Instrument of Accession. The State was reserved powers in regard to all the residuary subjects and the terms of the Instrument of Accession were not to be altered by any subsequent amendment of the Indian Independence Act, unless such an amendment was accepted by the Ruler of the State by a supplementary instrument. If an agreement was made between the Governor General and the Ruler, whereby any function in relation to the Dominion laws in the State was vested with the Ruler, such an agreement was to be deemed to form a part of the Instrument of Accession.

Hari Singh did not commit himself to accept any future Constitution of India. However, he reserved the right to enter into agreements with the Government of India under any future Constitution of India. The Instrument of Accession did not effect the continuance of the sovereignty of the Ruler in and over the State or the validity of any law in force in the State, save as provided by or under the Instrument of Accession.

Express stipulations were incorporated in the Instrument of Accession, whereby the Dominion Legislature was precluded to make laws authorising compulsory acquisition of land in the State. Hari Singh undertook to acquire land at the request of the Dominion Government or at their expense or if it belonged to him, transfer it to them, on terms as were agreed between him and the Government of India or in default of an agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

The delegation of powers, envisaged by the Instrument of Accession, was not an exception, specially admitted in favour of the Jammu and Kashmir State. It was a part of the broad framework of constitutional arrangements which the State's Ministry of the Government of India had evolved and within which the Indian States were invited to join the Indian Dominion. The accession stipulated a minimal transfer of power to the Dominion Government and the State's Ministry offered to the Rulers of

the States to accept the accession on a basis whereby they would be permitted to retain most of the prerogatives they exercised under the British Paramountcy. The major States and the Unions of the States were reserved the right to convene separate Constituent Assemblies to frame their own constitutions. The Mysore scheme, which formed the basis of the Interim Government in the Jammu and Kashmir State, stipulated the convocation of a Constituent Assembly in the State "to draft an Act for the government in the State". It was agreed upon by the Maharaja as well as the Government of India that the Interim Government would put up proposals for the election of a Constituent assembly to draft a Constitution for the government of the State. "I am agreeable to your suggestion" Hari Singh wrote to Gopalaswami Ayangar, "that the Interim Ministry should put up proposals for the election of the Constituent Assembly and its composition, but I would like to add that besides the elected elements, I must have the right to nominate a few persons to the Constituent Assembly out of the minority communities and other persons having substantial interest in the State if the result of election does not show their adequate representation."[2] However, in most of the States and the Unions of the States, the institution of constituent assemblies did not make much progress, mainly due to the difficult problems of federal integration, the States presented. A standard pattern of federal relations and the division of powers between the States and the proposed Union of India was still to be evolved and in the absence of a uniform pattern of federal relations, the process of constitution-making in the States was difficult. Constituent Assemblies were instituted only in the Mysore State and two States-Unions: the States Union of Travancore-Cochin and the States-Union of Saurashtra.

In the Jammu and Kashmir State the process of Constitution-making was beset with many more difficulties. The unsettled political conditions in the State, protracted conflict with Pakistan and the occupation of a large part of the territory of the State by the invading armies of that country and the disputations about the State in the United Nations relegated the convocation of the Constituent Assembly into background. Besides, there was deep divergence of opinion between the Maharaja and the Interim Government in regard to the constitutional organisation of the State as well as the proposed federal relation with India. Hari singh favoured the implementation of the Mysore scheme and the inclusion of the State in federal organisation of India in accordance with the stipulations of the Instrument of Accession. The outlook of the Conference

leadership was characterised by ambivalence and the Conference leaders made conflicting statements which varied in their content and emphasis from time to time and place to place. In effect they refused to reorganise the validity of the political arrangements, the Instrument of Accession envisaged. They considered the Instrument of Accession, signed by Maharaja Hari Singh as a "formal act" which they called "Paper Accession" and claimed that the actual accession of the State of India had been accomplished by the National Conference, which they claimed, represented the people of the State. The Conference leaders did not accept that the Instrument of Accession had integrated the State into the political jurisdiction, the Indian Dominion described, and did not recognise any obligations which emnated from the accession of the State to India, including the obligations which were involved in the delegation of powers to the Dominion Government. The Conference leaders presumed that with the lapse of the British Paramountcy the prescriptions which had been imposed by the British Crown on the sovereignty of the State, had terminated. To that extent, the Conference leaders reiterated the stipulations of the Cabinet Mission plan, which underlined restoration of sovereignty to the States after the Paramountcy was withdrawn. The Conference leaders, went a step further and claimed that since the treaties and engagements with the Rulers of the Indian States were subsidiary to the Paramountcy, the lapse of paramountcy had dissolved the basis of the Dogra rule. Consequently they demanded the transfer of the authority of the State to the Interim Government.

The Conference leaders insisted that the obligations undertaken by the Maharaja by virtue of the Instrument of Accession were subject to their approval. Therefore, they did not accept the accession of the State, as it was envisaged by the State Department or the Maharaja. In fact, they visualised the accession of the State as an administrative arrangement which was arrived at between them and the Government of India, not between the Maharaja and the Government of India.

The Conference leaders, had before the partition of India, committed themselves to a united India, which they had presumed would be based upon reorganisation of the British India and the Indian States into autonomous political identities, mainly based upon the reconciliation of communal balances. The partition, had, however, destroyed the basis of Indian unity the Conference leaders had visualised and liberated the two Dominions from the constraints any communal balances imposed

upon them. The Constituent Assembly of India had opted for a Union of India based on the secular integration of the people of India rather than the recognition of communal balances and federal autonomy. In broad terms, the Conference leaders took the position which underlined :

(i) the Jammu and Kashmir State was a Muslim majority State and in order to protect its Muslim identity, it could not be brought within the political organisation of India, which was dominantly Hindu;

(ii) the existing arrangements between the Maharaja and the Government of India could not form the basis of the constitutional organisation of the State or determine the future of the State's constitutional relations with the Dominion of India;

(iii) the future Constitution of the State and the constitutional relations between the State and the future federal organisation of India would be determined by fresh agreements between the Interim Government and the Government of India;

(iv) the stipulation of the Instrument of Accession would be treated as redundant to the extent such stipulations brought the State within the jurisdiction of the Dominion of India.

The National Conference leaders pledged their support to the accession of the State, but they refused to accept the secular integration of the State in the federal organisation of India. They claimed that the Jammu and Kashmir State was a Muslim majority State and as such it could be placed in the Indian political organisation only on the basis of communal balances, as a separate and autonomous political entity, which did not form a part of the constitutional organisation of India.

Third Alternative

The Conference leaders gave first formal expression to their outlook immediately after the cease-fire was accepted by India and Pakistan; and the fighting was suspended in the State. On 3 January 1949, two days after the cease-fire came into force, the Interim Government sent a long memorandum to the States Minister of the Government of India, Sardar Patel. The memorandum was signed by all the members of the Interim Government, including Girdhari Lal Dogra and Sham Lal Saraf. The

Interim Government informed Patel that since the National Conference would be required to approach the people of the State to seek their support for India in the impending plebiscite, it would be necessary for the Conference to explain its stand to the people in regard to the future constitutional organisation of the State and its position in the proposed federal structure of India. The Conference leaders pointed out to the States Minister that Pakistan had launched a severe campaign against Maharaja Hari Singh on the ground that the Maharaja represented the autocratic Hindu rule. They affirmed that the Muslims in the State distrusted the Maharaja and considered the Dogra rule as the symbol of their subjection. They proposed that in order to counteract the propaganda unleashed by Pakistan, it would be proper to remove Maharaja Hari Singh, banish him as well as the Maharani of the State from India and assure the Muslims in the State that the future of the Dogra rule would be determined by the Constituent Assembly of the State when it was convened.

The Conference leaders further wrote to Patel, that Pakistan had offered the Muslims of the State complete independence in their internal affairs and freedom to frame a Constitution for the government of the State without any interference from the State of Pakistan. Pakistan, the memorandum pointed out, had gone so far as to offer to vest in the State Government, powers with regard to the State army and communications, and assume only such powers as were transferred to it in regard to defence and foreign affairs. In order to neutralise the effect of the offer Pakistan had made, the Conference leaders suggested that Government of India should also issue a declaration, which assured the Muslims in the State that they would be ensured internal independence, the future constitutional organisation of the State would be framed by the Constituent Assembly of the State, the accession of the State would be limited to three central subjects foreign affairs, defence and communications and the future of the State army would be determined by agreement between the Interim Government and the Government of India and till the agreement was reached the control of the State army would be vested with the Indian army.

The proposals made by the Interim Government were received by the Indian leaders with considerable consternation. Patel rejected the proposals outright and informed the Interim Government that the

proposals involved issues which were beyond the competence of the States Ministry and therefore, could not be considered by him.

The Conference leaders were flustered by the refusal of the States Ministry to countenance the proposals they had made. Widespread rumours were set afloat by the Conference cadres that Sardar Patel supported the perpetuation of the Dogra rule in the State, alienate the Muslims of Kashmir and pave the way for eventual cessession of the Kashmir valley to Pakistan. Sheikh Mohammad Abdullah promptly wrote to Nehru that in case the proposals made by the Interim Government were not accepted, the National Conference would not be able to secure the support of Muslims for the accession of the State to India. Inside the State, the Conference leaders launched a frontal attack on the Maharaja. Among the many other allegations they brought against him, they accused him of interfering with the function of the Interim Government and obstructing the political and economic reforms, which the Conference leaders proposed to introduce in the State.

The tirade unleashed by the Conference leaders against the Maharaja disparaged the Government of India. A meeting of the Indian leaders in which Nehru, Sardar Patel, Maulana Azad and Gopalaswamy Ayangar participated was convened in Delhi to examine the issues the Conference leaders had raised. A decision was reached to advise the Maharaja to leave the State temporarily for some time and entrust his powers to his son Yuvraj Karan Singh. It was also decided that the future of the Dogra rule would be determined by the Constituent Assembly of the State after it was convened.

On 16 April 1949, Nehru had a long meeting with Sheikh Mohammad Abdullah in which many of the issues raised by the Conference leaders were brought under discussion. Nehru apprised Sheikh Mohammad Abdullah of the decisions he and his colleagues had arrived at, with regard to the temporary removal of the Maharaja, the Constitution of the State and future relations between the State and India. He also expressed his disapproval of the wild accusations, the Conference leaders had made, against the Maharaja.

Nehru wrote to Patel on 17th April, and gave the States Minister a resume of his discussions with Sheikh Mohammad Abdullah. He wrote to Patel :

> We know that Sheikh Abdullah and some of his colleagues have been very unwise in their public remarks and they have improperly criticised the Maharaja and asked for his removal. I had a long talk with Abdullah last night and again pointed out to him very forcefully how unfortunate and wrong his attitude was in this particular matter and how it was creating difficulties not only for us but for himself. He repeated his old complaints which included the very facts that our intelligence officer has stated. He promised that he would say nothing about the Maharaja in future, but he was very unhappy about it.[3]

Nehru wrote to Patel that it would not be safe any further to allow the drift to continue and proposed the removal of the Maharaja from the State. He suggested to Patel to ask Maharaja Hari Singh to come to Delhi and advise him to leave the State for sometime. Nehru wrote :

> The consequences are undoubtedly bad and I feel that it is no longer safe for us to allow matters to drift. You will remember that we discussed this matter fully sometime ago in your house. Gopalaswami Ayangar and others were present. Ultimately we came to the conclusion that the proper course to adopt was for us to take the attitude that it was for the people of Kashmir in the Constituent Assembly to decide about the future of the Maharaja. But even now it was highly desirable that the Maharaja should take some time of leave and not remain in Kashmir. It was proposed to put this matter to the Maharaja and to ask him to come to Delhi for the purpose. As he has not been here since then, I suppose nothing has been done. Meanwhile, the situation deteriorates and an open conflict is going on in the State between the adherents of the Maharaja and the adherents of Sheikh Abdullah.[4]

While the Indian leaders were trying frantically to find a solution of the problems in the State, and remove the Maharaja, Sheikh Mohammad Abdullah threw a bombshell in their midst. In a press statement, he gave to an influential English newspaper ''Scottsman'' he pleaded for the independence of the State. ''Accession on either side cannot bring peace'', Abdullah stated. ''We want to live in friendship with both Dominions. Perhaps a middle path between them, with economic cooperation with each, will be only way of doing it . But an independent Kashmir must be guaranteed not only by India and Pakistan, but also by

Britain, the United States and other members of the United Nations". Sheikh Mohammad Abdullah added further, "During the communal riots in the Punjab after partition, we tried in our humble way to stem the wave of fanaticism. That is why I urged we should wait before deciding our affiliation. I pleaded with both Dominions to help us first to win internal emancipation before asking us to choose ! India replied by refusing to make a standstill agreement with the Maharaja; Pakistan did so. When during the crisis India accepted the Maharaja's accession, Pandit Nehru insisted that it was only provisional and that people must decide later."[5]

The Indian leaders received a rude jolt by the statements Sheikh Mohammad Abdullah made. Patel wrote to Gopalaswami Ayangar :

> You have probably seen the interview by Sheikh Sahib to Micheal Davidson which was published in the Scottsman of 14 April 1949. A vehement exponent of accession to India seems to have been converted to an "independent Kashmir". He wants absentee landlords, most of whom have gone to Pakistan, to be expropriated. At the same time he has got, according to the information brought here by Sethi of the Agricultural Ministry, large tracts of valuable irrigated lands vacant lest non-Muslims should settle down on them, and this is at a time when elsewhere we are asking for every inch of land to be cultivated.[6]

Ayangar asked Dwarka Nath Kachru, personal secretary to Nehru, to visit Srinagar and instructed him to convey to Sheikh Mohammad Abdullah, his disapproval of the statement he had made. Ayangar instructed Kachru to inform Abdullah that he condemned his statesman and considered it to be the first step in the plan to set up an independent State of Jammu and Kashmir. Ayangar wrote to Sardar Patel :

> My attention was drawn to the contents of this interview earlier in the day. It is a more astonishing performance. Kachru, who is going to Kashmir tomorrow, has just been to see me, and I am sending a message through him to Sheikh Abdullah. I have asked him to tell the latter that I condemn the Sheikh's action and that I feel that what he has told Micheal Davidson and what the latter has published will have the most serious and mischievous consequences both in India and abroad. I have asked him to inform the

> Sheikh that, reading between the lines, I suspect a plan, the first step of which is this blessing by the Premier of Kashmir of the idea of an independent Kashmir and this public expression of his conviction that accession to India will not bring peace, and the first step of which may well be perhaps one of the greatest betrayals in history.[7]

It was, indeed, the greatest betrayal in history and later events proved that. As the scope of the Security Council intervention in the dispute widened, the National Conference rapidly draw closer to the idea of independence.

Sheikh Mohammad Abdullah treated Kachru with scant respect and told him that he had never meant all that he had said in his press statement and that he had done some "loud thinking". Ayangar had instructed Kachru to advise Sheikh Mohammad Abdullah to contradict the press statement he had given. When Kachru asked Sheikh Mohammad Abdullah to recant his statement, the latter refused to do so.

Maharaja's Removal

Patel, who had already invited Maharaja Hari Singh to come to Delhi, sent a fresh communication to him, advising him to come to Delhi without any delay. "I hope" Patel cabled to the Maharaja, "Your Highness received message sent by Shanker on my behalf by telegram and through your assistant private secretary about necessity of coming as early as possible. I am sorry to note that there had been no response from Your Highness so far. Matters which I propose to discuss with you admit of no delay and I should therefore be grateful if you come here as soon as possible."

Hari Singh hurried down to Delhi and met Patel on 29 April 1949. Maharani Tara Devi was also present. Patel disclosed to the Maharaja that Sheikh Mohammad Abdullah was insisting upon his abdiction. He told the Maharaja that though the Government of India was not prepared to accept his abdiction, they would still like him to leave the State for some time temporarily and appoint the Yuvraj, the Regent of the State in his absence. Patel told Hari Singh that his absence from the State would be in the interests of the State as well as India, particularly in view of the

complications which had arisen from the plebiscite proposals then being actively pursued in the United Nations. Hari Singh was stunned.[8]

Posterity alone will judge the Indian leaders for their decision to remove Maharaja Hari Singh to keep the Conference leaders on their side. Hari Singh never asked Patel whether India would win the plebiscite after he had left. If he had asked, the bluff would have been called off. Patel assured the Maharaja that his stay outside the State would be "a temporary phase" and he would return to the State after a settlement with regard to the plebiscite in the State had been finalised. Of the Congress leaders, Hari Singh trusted Patel alone, and he put his ship in Patel's hands. Patel drove him straight to the reefs. In uttar distress Hari Singh wrote to Patel :

> I should like to say at the outset that I was completely taken aback by this proposal, but coming as it did from you, in whom I have since the very beginning placed implicit trust and confidence and whose advice I have throughout followed on the many questions affecting me personally and my State both in the present and in future, I have been able somehow to adjust myself to it. I would not, however, be human if I did not express my sense of keen disappointment and bewilderment at having been called upon to make such a sacrifice of personal prestige, honour and position when all along I have been content to follow, sometimes even against my own judgement and conscience the advice in regard to the constitutional position in the State which I have been receiving from the Prime Minister of India or yourself, sometimes against arrangements which were agreed to only a few months before. Nor would it be fair on my part to conceal from you my own feeling that while Sheikh Abdullah has been allowed to depart, from time to time as suited his inclinations, from the pledged and written word, to act consistently in breach of the loyalty which he professed to me prior to his release from jail and the oath of allegiance which he took when he assumed office, and to indulge openly along with his colleagues in a campaign of villification and foul columny against me, both inside the State and outside, I should have had to be driven from position to position--each of which I thought I held on the advice of the State Ministry.[9]

> The contrast naturally fills me with poignant feelings. However, I once again putting my complete trusts in your judgement and benevolent intentions towards us, I might be prepared to fall in with your wishes and to absent myself from the State for a period of three or four months in consideration of the fact as emphasised by you, namely, complications created by the reference to UNO and the plebiscite issue.

Seeking assurances from Patel that his absence from the State would not be construed as a prelude to his abdiction, he wrote to Patel :

> I should like to be assured that this step is not a prelude to any idea of abdication. I should like to make it clear now that I cannot entertain the latter idea even for a moment and am fully prepared to take the consequences. I regard such a demand from my Prime Minister and his colleagues as a clear breach of the many understandings on which constitutional arrangements have been based from time to time and a positive act of his disloyalty, treachery and deception.
>
> Sheikh Abdullah should be clearly told to stop the campaign of vilification against me and to abandon all activities, both on his part and that of his followers, aimed at securing my abdication. I feel that the sacrifice which I am being called upon to make would be in vain if I continued to be the target of their public and private utterances.[10]

Patel reiterated the assurances he had given to Hari Singh adding that the future constitutional organisation of the State would be determined by the Constituent Assembly of the State. He wrote to Hari Singh :

> Regarding the points which Your Highness has referred to me, I should like to state that the question of Your Highness' abdication does not arise. We have made the position quite plain to Sheikh Mohammad Abdullah, and we hope there will be an end to the public controversies centering round this matter as well as to the derogatory reference to Your Highness in the press and on the platform in the State. Your Highness will, of course, appreciate that the future Constitution of the State would be determined by the duly elected Constituent Assembly.[11]

After the arrangements for the removal of Maharaja Hari Singh were completed, the Conference leaders were invited to Delhi to finalise a settlement with regard to the constitutional organisation of the State and its position in the future organisation of ~~the State~~. A decision had already been arrived by the Conference of State Premiers that instead of convening separate Constituent Assemblies in the States to frame the State Constitutions, the Constituent Assembly of India would draw up uniform constitutional provisions for the States. Since the National Conference leadership did not accept the decision of the Premiers Conference, separate arrangements had to be reached between the State and the Indian Government. Consequently, a Conference of the Conference leaders and the Central leaders was held in Delhi in May 1949.

Delhi Conference

The deliberations of the conference covered almost all the aspects of constitutional organisation of the State and the relations between the State and the Union of India. Nehru informed the National Conference leaders of the agreement reached with Maharaja Hari Singh and told them that it had been agreed upon that a Constituent Assembly would be convened in the State which would determine the future of the Dogra rule and draw up a Constitution for the government of the State. Nehru, further outlined the broad basis of the constitutional relations between the State and the Union of India and proposed the inclusion of Jammu and Kashmir in the constitutional organisation of India with such modification as would suit the specific historical and political antecedents of the State. He proposed the application of the Constitution of India to the State with regard to the fundamental rights, principles of State Policy and the federal judiciary. He also proposed the extension of the Union jurisdiction to the State with regard to the subjects included in the Central List of the Constitution of India, which enumerated the powers of the Union Legislature.

While the Conference leaders accepted the proposals that the Constituent Assembly of the State would determine the future of the Dogra rule and draw up the Constitution of the State, they did not endorse the proposals for the temporary removal of the Maharaja, and the appointment of a Regent from the ruling family. They insisted upon the abdication of the Maharaja and emphasised that the temporary removal of the Maharaja would not ally the fears of the Muslims in the State, who

identified the Dogra rule with their subjection.

In regard to the constitutional relations between the State and the Union of India, the argument of the Conference leaders was more involved. They refused to accept the inclusion of the State in the territorial jurisdiction and the constitutional organisation of India and refused to commit themselves to the acceptance of any application of the Constitution of India to the State in respect of the matters which did not correspond to the terms of the Instrument of Accession, and which had been approved by the Interim Government. The Conference leaders, in effect, proposed to create separate instruments which would be independent of the Constitution of India and which would determine the constitutional relations between the State and the Union of India. They particularly refused to accept the application of the Constitution of India to the State with regard to the fundamental rights, principles of State policy and the federal judiciary on the ground that the provisions with regard to the fundamental rights and the principles of state policy would be incorporated in the Constitution of the State and the extension of the jurisdiction of the federal judiciary, therefore, would be unnecessary.

The Conference leaders expressed strong reservations about the transfer of the State army to the Union and demanded the restoration of the State army to the Interim Government. They claimed that after the emergency was over and the Indian forces were withdrawn from the State, the State army would take over the defence of the State. The Conference leaders complained that during the Dogra rule, the State army had always been a close preserve of the Hindu Rajputs, excluding the Muslims and proposed its reorganisation to rectify the deficiency of the Muslims in its ranks. They sought overtly to convey to the Central leaders, that they did not recognise that the deployment of the Indian troops in the State was a part of the arrangements envisaged by the Instrument of Accession and the powers of the Government of India in regard to the defence of the State, did not include the control and disposition of the armed forces of the State. The Conference leaders obviously presumed that the Indian forces had been deployed in the State to repel the invading armies of Pakistan and after that was achieved, they would be withdrawn and defence of the State would be entrusted to the Muslim ranks of the State army which the Interim Government would, in the meanwhile raise.

The Conference leaders underlined the following bases for the constitutional organisation of the State and its constitutional relations with the Union of India :

(i) that a separate Constituent Assembly would be convened in the State, on the basis of universal adult franchise to draw up the Constitution of the State;

(ii) that the Dogra rule would be abolished and the Maharaja would be replaced by a Chief Executive, who would for the time being be nominated by the Interim Government;

(iii) The powers of the Maharaja, including the powers reserved for the Maharaja, would be transferred to the Interim Government;

(iv) that the constitutional relations between the State and the Union would be limited to the division of powers between the State and the Dominion Government stipulated by the Instrument of Accession, subject to such modifications as the Interim Government would specify;

(v) the residuary powers would be vested with the State Government;

(vi) the provisions of the Constitution of India, except those which were deemed to correspond to the stipulations of the Instrument of Accession by the Interim Government, would not apply to Jammu and Kashmir;

(vii) the control over the State army would be restored to the State Government;

(viii) the existing financial relations between the State and the Dominion Government would continue.

The central leaders did not approve of the position taken by the Conference leaders and insisted upon the application of the provisions of the Constitution of India to the State of Jammu and Kashmir in regard to the territorial jurisdiction of the Union, Citizenship, fundamental rights and the related legal guarantees, federal judiciary and the principles of State policy. Nehru pleaded for the formulation of a uniform Bill of

Rights for all the people in India, including the people of the Jammu and Kashmir State. He told the Conference leaders that no people in India, whatever the exigencies of the situation, in which they were placed, would be deprived of the rights and the safeguards which the Constitution of India would envisage and no State Government in India including the Government of Jammu and Kashmir, would be vested with the authority to restrict or limit such rights and safeguards. Nehru laid great stress on the application to the State of the principles of State policy of the Constitution of India, which he claimed the Constituent Assembly of India had evolved with great pride and which promised the people of India, social justice, freedom from want, protection against exploitation, expansion of education, the eradication of untouchability, protection of children and better standards of life.

The central leaders did not accept the contention of the Conference leaders in regard to the State army and explained to the Conference leaders that the Dominion Government had assumed exclusive power over the defence of the State and taken over the operational as well as administrative control of the defence forces of the State. The central leaders pointed out to the Conference leaders that the transfer of powers to the Dominion Government about the State army had been accomplished by Instrument of Accession and the responsibility of the defences of the State rested with the Government of India and could not be, under any circumstances, transferred to the State, even after the present emergency had ended. With regard to the recruitment of Muslims to the State army, Nehru assured the Conference leaders, that all people in India, including the people in the State, would enjoy equality of opportunity guaranteed by the Constitution of India and therefore, the Muslims in the State would not suffer any discrimination in respect of their recruitment of the State army.

An agreement was finally reached between the central leaders and the National Conference leaders which envisaged that,

(i) the provisions of the Constitution of India with regard to the Government in the States would not apply to the Jammu and Kashmir State;

(ii) the Constitution of the State would be framed by the Constituent Assembly of the State, which would represent the people of the State;

(iii) The future of the ruling family of Maharaja Hari Singh would be decided by the Constituent Assembly of the State;

(iv) the division of powers between the State and the Union would be based on the terms specified by the Instrument of Accession and the Union jurisdiction would extend to the subjects in respect of which the Dominion Government had assumed powers by virtue of the Instrument of Accession;

(v) the Constituent Assembly of the State would determine such other subjects which would be transferred to the Union and in respect of which the Union would assume jurisdiction over the State;

(vi) the provisions of the Constitution of India with regard to the jurisdiction of the Union, Citizenship of the Union, fundamental rights, and the related legal safeguards, principles of State policy and the jurisdiction of the federal judiciary would extend to the State, subject to the modifications that the provisions would not impinge upon the special domicilliary rights in force in the State and the economic reforms the Interim Government would undertake;

(vii) the administrative and the operational control of the State army would remain vested with the Indian army;

(viii) the President of the Indian Union would be vested with the powers to modify or terminate the operation of the specific provisions of the Constitution of India in regard to the Jammu and Kashmir State, on the recommendations of the Constituent Assembly of the State.[12]

It was agreed upon between the Conference leaders and the Central leaders that the Maharaja would, in accordance with the agreement reached between him and the Government of India, leave the State temporarily along with the Maharani and Karan Singh, the Yuvraj, would be appointed the Regent of the State in his place. It was, however, decided that the removal of the Maharaja, would not form a part of the formal agreement reached between the Conference leaders and the central leaders, on the constitutional organisation of the State and its placement in the Indian Union. Agreement was also reached between the Conference leaders and the central leaders with regard to the representa-

tion of the Jammu and Kashmir State in the Constituent Assembly India. Jammu and Kashmir did not join the Constituent Assembly of India before it acceded to India, nor were any representatives of the State deputed to the Constituent Assembly of India after its accession. Out of the ninty three seats allotted to the States in the Constituent Assembly, Jammu and Kashmir was allotted four seats. It was agreed upon that the representatives of the State would be selected by the Interim Government and formally nominated by the Maharaja.

Hardly a day after the Conference at Delhi was over, Sheikh Mohammad Abdullah addressed a long note to Nehru, seeking fresh clarifications on a number of issues on which decision had been reached between the National Conference leader and the central leaders. Nehru was dismaved at the manner in which the Conference leaders sought to raise fresh controversies with regard to constitutional organisation of the State. He wrote to Abdullah :

1. In the course of talks at Sardar Patel's residence on 15 and 16 May 1949 between some of my colleagues and me and you and your colleagues, important issues raised by you in regard to the future of Jammu and Kashmir State were discussed.

2. Among the subjects that were discussed were :

   (i) framing of the Constitution of the State;

   (ii) the subjects in respect of which the State should accede to the Union of India;

   (iii) monarchical form of government in the State;

   (iv) the control of the State Forces; and

   (v) the rights of the citizens of the State of equality of opportunity for service in the State army.

3. As regards (i) and (iii), it has been the settled policy of the Government of India, which on many occasions has been stated both by Sardar Patel and me, that the Constitution of Jammu and Kashmir State is a matter for determination by the people of that State

represented in a Constituent Assembly convened for the purpose. In the special circumstances of the State of Jammu and kashmir, the Government of India have no objection to the Constituent Assembly of the State considering the question of the continuance of the association of the State with a constitutional monarchy.

4. In regard to (ii) Jammu and Kashmir State now stands acceded to the Indian Union in respect of three subjects, namely foreign affairs, defence and communications. It will be for the Constituent Assembly of the State, when convened, to determine in respect of what other subjects the State may accede.

5. Regarding (iv) both the operational and administrative control over the State Forces has already been, with the consent of the Government of Jammu and Kashmir, taken over by the Indian Army. The final arrangements in this connection, for the duration of the present emergency, including financial responsibility for the expenditure involved, were agreed to between us on the 16th instant.

6. As regards (v) the citizens of the State will have equality of opportunity for service in the Indian army. Under Article 10 of the draft of the new Constitution as passed by the Constituent Assembly of India, equality of opportunity for employment under the State, including employment in the Indian Army, is declared to be amongst the fundamental rights of all Indian citizens.

7. I trust that the Government of India's position, as stated above, will give you the clarification that you have asked for.[13]

Nehru visited Srinagar in the last week of May and had further discussions with Sheikh Mohammad Abdullah and the other leaders of the National Conference on the special position State would assume in the constitutional organisation of India. In fact, Sheikh Mohammad Abdullah had raised many disquieting issues in his communication to Nehru particularly about the administrative control of the State army during the emergency, the division of powers between the Central government and the State and the future Constitution of the State. Nehru assured Abdullah and the other leaders of the Conference that the future Constitution of the State would be drafted by the Constituent Assembly of the State and the future of the ruling dynasty would also be determined

by the Constituent Assembly of the State. He further assured the Conference leaders that the division of powers between the State Government and the central Government of India would be governed by the provisions of the Instrument of Accession and the Union legislature would exercise such powers in relation to the State, as were transferred to the Dominion Government in accordance with the Instrument. Nehru told the Conference leaders that the operational and administrative control of the State army was vested with the Indian army command in pursuance of the agreements with the State Government but he reassured the State leaders that recruitment to the State forces would not be prejudiced by any considerations of caste, religion and place of birth.

Nehru assured the Conference leaders that the provisions of the Constitution of India, not incidental to the Instrument of Accession would not be extended to the State and the Constituent Assembly of the State would be vested with the residuary authority to formulate constitutional provisions with regard to matters which were not covered by the Constitution of India. He, however, told the Conference leaders that the provisions of the Constitution of India which envisaged the territorial jurisdiction of India, Indian citizenship, rights and obligations of the people of India and the related legal guarantees, the Directive Principles of the State Policy, the jurisdiction of the federal court in regard to the settlement of disputes between the Central Government and the States and the enforcement of constitutional rights, powers of the Government of India to deal with emergencies arising our of war, invasion or internal disturbances and the elections, would be applicable to the Jammu and Kashmir State, because such application emanated from the fact of accession of the Indian States to the Dominion of India. Many powers, Nehru told the Conference leaders, were assumed by the Government of India in regard to the State, because they were inherent in the accession of the States. He further told the Conference leaders that the provisions of the Constitution of India with regard to the Government of India would also be applicable to the State, subject to the exceptions incorporated in the Instrument of Accession, mainly because the Government of India could exercise powers in regard to the State which were conferred upon it by the Constitution of India. Nehru pointed out to the Conference leaders that any Constitution of the State of Jammu and Kashmir could not vest powers in the instruments which it did not create and, therefore, could not vest powers in the Government of India, which the Constitution of India did not define.[14]

Nehru asked Patel to communicate to Maharaja Hari Singh the terms of the agreement which had been arrived at with the Conference leaders. Hari Singh was informed of the negotiations at Delhi but, at no stage was he consulted about the arrangements the Government of India sought to reach with the Conference leaders. Nehru wrote to Patel :

> I hope that this will be an end to the squabbles that have been going on in public. This has been impressed upon Sheikh Abdullah and I am pointing this out to him again in a separate letter.
>
> I take it that the Maharaja and the Maharani will keep out of the State, as agreed upon, for some months. The Bombay house will be at their disposal. It would have been better if they had gone out of the country for a period, say two or three months, but that is a matter for them to decide. I do not think any period would be fixed for the Maharaja's absence from Kashmir. The matter had better be left vague.
>
> The Maharani naturally dislikes intensely the idea of being away from her son. I do not think it is necessary for her to be kept absolutely away and she can certainly visit her son later from time to time. But for the present, I think it would be to the advantage of all concerned, including the Maharaja and the Maharani, for both of them to stay away for a while.
>
> I hope you will explain to the Maharaja and the Maharani as well as the Yuvraj the agreements arrived at between us and Sheikh Abdullah and his colleagues. The written agreement rightly does not say anything about the Maharaja going out of the State. But this was a private assurance given by us and we have naturally to stand by it.[15]

The Interim Government nominated four members to represent the Jammu and Kashmir State in the Constituent Assembly of India. The nominations were referred to Hari Singh who was staying at Dehra Dun. In May 1949, Maharaja deputed the representatives to the Constituent Assembly of India. The representatives of the State joined the Constituent Assembly on June 6, 1949. On 9 June 1949, Maharaja Hari Singh announced by a proclamation, his decision to leave the State and nominated his son Yuvraj Karan Singh, the Regent of the State.

Hari Singh had hardly left the State, when the Conference leaders, who had by now assumed complete control over the government of the State, began to extricate themselves from the agreement which they had reached with the Central leaders at Delhi in May. The Conference leaders initiated a number of closed-door meetings in which the terms of the agreement reached with the Central leaders, were subjected to serious reconsideration. Most of the meetings were secretly organised and were confined to the Muslim leaders of the Conference, the Sikhs and the Hindus being excluded. Prominent and influential Muslims who had opposed the accession of the State to India, and senior Muslim officers of the State Government who were opposed to the National Conference, were specially invited to attend these meetings. Many among them were in clandestine contact with the Azad Kashmir authorities on the other side of the cease-fire line and worked for the intelligence agencies of Pakistan which operated in the State. The feelings which were voiced in these meetings broadly represented :

(i) that the National Conference leadership should not oppose the proposed plebiscite in the State and accordingly should not accept the inclusion of the State in the territorial jurisdiction or the constitutional organisation which the Constitution of India envisged;

(ii) that India was a predominantly Hindu majority State and the Muslims of Kashmir would lose their identity if the State was integrated into the proposed constitutional organisation of India, in which the Hindus would always exercise dominence;

(iii) that the Muslim majority character of the State should not be impaired and the only safeguard to protect it would be to keep the State out of the constitutional organisation of India;

(iv) that the convocation of the Constituent Assembly would at the time be premature and the Assembly should be convened after the final decision with regard to the accession of the State was reached and the part of the State under the occupation of Pakistan was reunited with the rest of the State;

(v) the Interim Government should devise a Constitution for the government of the State.

The Conference leaders, including Sheikh Mohammad Abdullah, Mirza Afzal Beg and Mulana Masoodi who had negotiated the agreement with the Central leaders in May at Delhi, tacitly agreed with the views that the State should not be brought within the territorial jurisdiction of the proposed Union of India or its constitutional organisation and the Muslim majority character of the State should form the basis of the relations between the State and the Union of India. They also agreed with the view that the relations between the State and the Union of India should be based on the terms which the Instrument of Accession specified for the accession of the State of India.

The Conference leaders decided to repudiate the agreement they had reached with the Central leaders in May, and evolved fresh proposals on which they claimed, the constitutional relations between the State and the Union of India would be based. The proposals underlined that :

(i) the State would not be brought within the territorial jurisdiction of the proposed Union of India or its constitutional organisation;

(ii) the constitutional relations between the State and the proposed Union of India would be based on the terms of the Instrument of Accession;

(iii) the administrative control over the State forces would be restored to the State after the forces were reorganised and the State was in a position to undertake their operational control;

(iv) no instruments, including the Constituent Assembly of the Jammu and Kashmir State would be vested with any constituent power to change and modify the existing constitutional relationship between the State and India;

(v) the Constituent Assembly of the State would be vested with the power to draw up the Constitution of the State which would envisage provisions pertaining to the quality of judicial review, the quantum of individual freedom and the related legal safeguards, principles of the State policy and election to the representative bodies envisaged by the Constitution.

The Conference leaders did not apprise the central leaders of their views till the draft provisions of the Constitution of India were drawn up

and sent to the Conference leaders for their approval. The draft provisions were based on the agreement which had been concluded between the Conference leaders and the central leaders. The draft provisions were enshrined in draft Article 306-A of the Constitution of India. The Article stipulated :

(i) the provisions of the Constitution of India with regard to Part B States, would not apply to the Jammu and Kashmir State;

(ii) A Constituent Assembly would be convened in the State to draft the Constitution of the State;

(iii) provisions of the Constitution of India with regard to the territories of India, Indian citizenship, fundamental rights and the related legal safeguards and the Directive Principles of the State Policy would apply to the State;

(iv) the other provisions of the Constitution of India would apply to the State with such exceptions as were mutually agreed upon between the Government of India and the State Government;

(v) the Union would exercise powers with regard to the subjects, which were specified by the President of India to correspond with the subjects transferred to the Dominion Government by the Instrument of Accession, in consultation with the State Government, and such other subjects as would be specified by the President of India in concurrence with the State Government;

(vi) the President of India would be empowered to modify, restrict or suspend the operation of the provisions of Article 306-A, on the recommendations made by the Constituent Assembly of Jammu and Kashmir State.[16]

The Working Committee of the Conference sat in several sessions to examine the draft and as was anticipated, refused to approve it. The Working Committee resolved that the National Conference could not accept the stipulations of Article 306-A, as a basis for constitutional relations between the State and the Union of India. The Working Committee disapproved of the preamble to Article 306-A, which stipulated that the provisions of the Article would be of a transitional nature and

would be subject to modification by the Constituent Assembly of the State. The Working Committee also disapproved of the application of any provisions of the Constitution of India to the State except the provisions which corresponded to the terms of the Instrument of Accession. The Working Committee expressed the fears that the application of the provisions of the Constitution of India with regard to citizenship, fundamental rights and the related constitutional legal guarantees would prejudice the domicilliary State-Subjects Rules in force in the State.*

Almost all the Muslim members of the Working Committee of the Conference, denounced the settlement which the Conference leaders had reached with the Central leaders in May at Delhi. The Hindu and the Sikh members of the Committee watched the proceedings with helpless indignation. Few of the Conference leaders registered their disagreement with the dicisions the Working Committee had taken. The small section of the leadership which felt ravaged over the developments in the Conference, hailed from Jammu. The people of Jammu, they knew, would never support the move to keep the State out of the constitutional organisation of India and any attempt to do so would not only alienate them but would evoke severe resistance from them.

On October 12, 1949, Sheikh Mohammad Abdullah communicated to Gopalaswami Ayangar the decisions of the Working Committee and informed him that the Working Committee had disapproved of the draft constitutional provisions embodied in Article 306-A. Abdullah informed Ayangar that the Working Committee had refused to accept that the constitutional provisions with regard to the State would be of transitional nature and would be subject to modification by the Constituent Assembly of the State. He informed Ayangar that the Working Committee had disapproved of the application of the Constitution of India to the State except in respect of those of its provisions which corresponded to the terms of the Instrument of Accession. The Working Committee had expressed fears, Abdullah informed Ayangar, that the application of the provisions of the Constitution of India, pertaining to the Indian citizenship, the fundamental rights and the Directive Principles of State Policy would prejudice the domicillary State-subject rules. Sheikh Abdullah sent an alternative draft to Gopalaswami Ayangar which stipulated the

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* The State Subject rules imposed restrictions on people who were not state subjects in respect of immovable property in the State, state services, and other rights which were available to the state subjects.

application of only such provisions of the Constitution of India to the State, as corresponded to the stipulations of the Instruments of Accession. Sheikh Mohammad Abdullah added an explanation to his draft which defined the State Government as "the Ruler of the State acting on the advice of the Council of Ministers appointed under the proclamation of the Maharaja dated 5 March 1948."

Ayangar received a jolt when the communication of the Conference was delivered to him. On 14 October 1949, he had a long meeting with Sheikh Mohammad Abdullah and Mirza Afzal Beg, and tried to pursuade the Conference leaders to accept the draft provisions of Article 306-A. Ayangar explained to the Conference leaders that the State would be reserved the right to frame a Constitution for its government and would be vested with all powers of the government except those which had been transferred to the Dominion Government by the Instrument of Accession. However, he told the Conference leaders, that the accession of the State underlined that the State would be brought within the broad structure of the imperatives, the Constitution of India envisaged. The Conference leaders stuck to their stand and told Ayangar bluntly that the State had acceded to India in regard to only three subjects : foreign affairs, defence and communications and retained its independence in all other aspects. They told Ayangar that it was on that understanding that the people of the State had supported accession of the State to India and since the Conference owed a duty to the people, they would not be able to accept the draft provisions. The meeting ended without a settlement.

Ayangar did not possess the acumen to deal with the Conference leaders. Nehru was away in the United States of America. Over-weighed by the experience at the Security Council, Ayangar dreaded to antagonise the Conference leaders. He gave way and redrafted the provisions of Article 306-A, restricting the application of the Constitution of India to the State to Article 1, which defined the territories of the Union, and the provisions pertaining to Indian citizenship, and making the fateful omission of deleting the provisions with regard to the fundamental rights and the related constitutional safeguards. He wrote to Sheikh Mohammad Abdullah :

> Our discussion this morning, as I indicated to you, left me even more distressed than I have been since I received your last letter from Srinagar.

> But this personal reaction of mine is irrelevant when I feel weighed with the responsibility of finding a solution for the difficulties that after, Pandit Ji left for America and within the last few days, have been created, from my point of view, without adequate excuse.
>
> In spite of this personal feeling, I am anxiously keen now as ever I have been to see that you are not given any cause for genuine or even imagined grievance in regard to the policy that the Government of India are following, in relation to Kashmir. I have, therefore, since you left me this morning, tried to find a way out of the present situation in regard to Article 306-A.
>
> I enclose a draft of Article 306-A with the language of it readjusted so as to meet practically all your points.
>
> I do not wish to write a thesis on the changes that I have made. You will be able to recognise them easily. If you wish to have any further elucidation in the matter I would request you to come over and discuss it frankly with me.
>
> I do hope you will appreciate the gesture I am making. If you are agreeable to this new draft being substituted for the one of which the Drafting Committee had already given notice, I shall ask the Drafting Committee to give notice of this draft in substitution of the other one. Personally I should like you to move this draft yourself in the House. We shall be there to support you, and I hope the debate would be maintained at such a high level that a report on it, when cabled to America, will have an effect on the discussions of the Kashmir problem, that may there be going on which will be of the maximum help to Pandit Ji.
>
> I am looking forward to your rising to the occasion.[17]

Apparently Ayangar had learnt no lessons at the Security Council otherwise why should he have concerned himself so seriously, in calling upon the Kashmir delegation to initiate the debate on the special constitutional provisions for the State. Which high level of discussion, he asked Sheikh Abdullah to maintain, so that Nehru would take advantage

of it in America? Sheikh Mohammad Abdullah had delivered a more spirited harrangue in the Security Council and that had earned both Abdullah and Ayangar more columny. If Ayangar sought to please Nehru, he should have realised that no one in America would have applauded him for having framed the draft provisions of Article 306-A and having condemned the people of the State, particularly the Hindus, the Sikhs and the Buddhist minorities, to servitude and suffering. Ayangar had served the State as the Prime Minister to Maharaja Hari Singh for more than six years and he was aware of the intricate balances of community demands, regional pressures and amorphous class interests which characterised the political sociology of the State. He, as well as Nehru had experienced the ruthless severity with which the Conference leaders had sought to reorganise these balances and to establish fresh alignments which ensured political precedence for the Muslims in the State. Gilding the perfidy, he wrote to Patel :

> Sheikh Abdullah and two colleagues of his had a talk with me for about an hour and a half this morning. It was a long drawn out argument, and, as I told you this morning, there was no substance at all in the objections that they put forward to our draft. At the end of it all, I told them that I had not expected that, after having agreed to the substance of our draft both at your house and at the party meeting, they would let me and Pandit Ji down in the manner they were attempting to do. In answer, Sheikh Abdullah said that he felt very grieved that I should think so but that in the discharge of his duty to his own people he found it impossible to accept our draft as it was. I told him thereafter to go back and think over all that I had told them and hoped that he would come back to me in a better frame of mind in the course of the day or tomorrow.
>
> I have since thought over the matter further and dictated a draft which, without giving up the essential stand we have taken in our original draft, readjusts it, in minor particulars in a way which I am hoping Sheikh Abdullah would agree to.[18]

Patel, apparently, did not favour the modifications, Ayangar had made in Article 306-A. He did not approve of the deletion of fundamental rights and Directive Principles of State Policy, from the provisions of the Constitution of India, which would apply to the State. Perhaps, Patel

visualised the consequences to which such a course of action would inevitably lead. He wrote to Ayangar :

> I find there are some substantial changes over original draft, particularly in regard to the applicability of fundamental rights and Directive Principles of State Policy. You can yourself realise the anamoly of the State becoming a part of India and at the same time not recognising any of the provisions.
>
> I do not at all like any change after our party had approved of the whole arrangement in the presence of Sheikh Sahib himself. Whenever Sheikh Sahib wishes to back out, he always confronts us with his duty to the people. Of course, he owes a duty to India or to the Indian Government, or even on a personal basis, to you and the Prime Minister who have gone all out to accommodate him.
>
> In these circumstances any question of my approval does not arise. If you feel it the right thing to do, you can go ahead with it.[19]

Ayangar's discomfiture did not end here. The revised draft of Article 306-A, was also rejected by the Conference leaders. Sheikh Mohammad Abdullah wrote to Ayangar that it was not possible for him and his colleagues to accept the revised draft as well. He sent an alternative draft to Ayangar which underlined that the provisions of the Constitution of India which corresponded to the terms of the Instrument of Accession would apply to the State and the other provisions of the Constitution of India would apply to the State with the approval of the Interim Government. Abdullah wrote to Ayangar that the alternate draft "went far beyond the sphere in respect of which we had acceded to India". Meanwhile Afzal Beg gave the Constituent Assembly the notice of an amendment in Article 306-A, which sought to restrict the application of the Constitution of India to the terms of the Intrument of Accession.

Ayangar met the Conference leaders again and tried to pursuade them to accept the revised draft. However, the Conference leaders did not relent. Finally, Ayangar drew up a fresh draft in consultation with Afzal Beg, who was deputed by Sheikh Mohammad Abdullah to negotiate a settlement with Ayangar. Abdullah pulled the strings from behind. The revised draft stipulated :

(i) Article I would apply to the State and the State would be included in the territories of the Union of India;

(ii) No other provision of the Constitution of India would be applied to the State, except with the approval of the Interim Government of the State;

(iii) the division of powers between the Union and the State would be determined in accordance with the terms of the Instrument of Accession;

(iv) the President of India would be empowered to terminate or modify the operation of the Constitutional provisions with regard to the State on the recommendation of the Constituent Assembly of the State;

(v) the State Government would be construed to mean the Maharaja acting on the advice of the Council of Ministers appointed under his proclamation dated 5 March 1948.

The revised draft of Article 306-A was circulated in the Constituent Assembly on 16 October, 1949. It came up for the consideration of the Assembly the next day. Many of the members of the Constituent Assembly objected to the explanation defining the Government of the State and pointed out to Ayangar that the explanation vested the powers of the government with the "Council of Ministers appointed under the Maharaja's Proclamation dated 5 March 1948", in perpetuity and in effect excluded all subsequent government of the State from the purview of the Constitution of India. Ayangar had probably glossed over the anomaly involved in the explanation. Ayangar modified the explanation in so far as the Government of the State would be construed to mean the "person for the time recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March 1948." Ayangar informed the Conference leaders about the modifications he had made in the explanation on the morning of 17 October 1949. The Conference leaders refused to approve of the modification Ayangar had made. Ayangar along with Maulana Azad assured the Conference leaders that the modification in the explanation was deemed necessary to avoid the discrepancy in Article 306-A which

implied a perpetual Interim Government. The Conference leaders, however, did not approve of the amendment and told Ayangar and Azad that if the modifications to the explanation were not withdrawn, the Conference leaders would move the amendment of which they had given notice to the Assembly before the draft was revised by Ayangar and Beg.

Unable to bring round the Conference leaders to condescend to the changes he had brought about in the draft provisions, Ayangar presented the draft Article 306-A to the Constituent Assembly for its consideration. The Conference leaders sulked away and did not join the debate on the draft provisions. They joined the deliberations of the Assembly after Ayangar had already delivered a part of his speech. The Conference leaders watched the proceedings in grim silence. "The President of the Assembly waited for a minute or two for members to rise for making speeches before he put the draft to the House". The Conference leaders did not rise to speak and did not move any amendment to the draft. The draft was adopted by the Assembly without any dissent.

The Conference leaders were bitter at the turn the events had taken. Sheikh Mohammad Abdullah wrote a sharp rejoinder to Ayangar asking him to reconsider the decision the Constituent Assembly had taken on Article 306-A. He wrote to Ayangar that if that was not done, he would resign from the Constituent Assembly along with the other representatives of the Jammu and Kashmir State. Sheikh Mohammad Abdullah wrote:

> As I have told you before, I and my colleagues have been extremely pained by the manner in which the thing has been done, and, after careful consideration of the matter, we have (arrived) at the conclusion that it is not possible for us to let the matter rest here. As I am genuinely anxious that no unpleasant situation should arise, I would request you to see if even now something could be done to rectify the position. In case I fail to hear from you within a reasonable time, I regret to say that no course is left open for us but to tender our resignation from the Constituent Assembly.[20]

Ayangar was sore. He had not been treated with any consideration by the Conference leaders. Indeed, he had gone to the farthest limits to accommodate tneir views. He could not retrieve the ground he had lost, but is was evident that he could not go any further to appease the State leaders. He wrote back to Abdullah :

> It is true that after having unsuccessfully attempted along with Maulana Azad, to pursuade you to agree willingly to substitution of the words "for the time being" for the word "appointed", I did move the Article with the amendment after obtaining the permission of the President to do so. The whole House accepted this. I am sorry that you could not move any amendment of your own against the one I moved. There was, however, nothing to prevent you or any of your colleagues from opposing the amendment that I did move, and as a matter of fact, we were looking forward to your making a speech on the whole of the article and believe the President waited for a minute or two for members to rise for making speeches before he put the draft article to the House.

Ayangar wrote to Abdullah, that, if he and his colleagues felt aggrieved they could take such steps as the rules of the House allowed for any rectification. He forewarned Abdullah that the resignation of the Conference members from the Constituent Assembly would have serious repercussions, in Kashmir and outside. He wrote :

> I do not consider, therefore, that there is any justification for your entertaining any idea of resignation from the Constituent Assembly. The step, if taken, would produce the most unwelcome and serious repercussions in Kashmir, India and the world, and I must ask you to communicate with the Prime Minister before you decide on anything like it. For myself, I shall pass on to him your letter and this reply of mine to it.[21]

At the revision stage, Article 306-A was renumbered Article 370 of the Constitution of India. On 25 November, 1949, the Regent of the State, Karan Singh, by a proclamation ordered that the relations between the State and the Union of India be governed by the Constitution of India. According to the proclamation the Constitution of India superseded and obrogated all other constitutional provisions inconsistent with it which were in force in the State. On 26 January 1950, the Constitution of India came into force.

Special Status

In accordance with the special provisions embodied in Article 370 of the Constitution of India, the Jammu and Kashmir State was exempted

from the application of the provisions of the Constitution of India dealing with the States in Part B of its First Schedule.[22] In Part B of the First Schedule were listed the erstwhile princely States, which had acceded to the Dominion of India, but which had not merged with any province or had not been reorganised into centrally Administered Areas. Hyderabad, Jammu and Kashmir, Mysore, Madhya Bharat, Patiala and East Punjab States Union, Rajasthan, Saurashtra, Travancore - Cochin and Vindhya Pradesh were included in Part B of the First Schedule. A separate part: Part VII was included in the Constitution, providing for the internal constitution of all these States. Provisions of Part VII provided that Part VI of the Constitution, which envisaged provisions for Part A States, corresponding to Governor's provinces, would also apply to the Part B States, subject to certain modifications and exceptions. Each of the States was to have a democratic government with a Council of Ministers functioning in responsibility to a legislature constituted in the same manner as in the Part A States. The Jammu and Kashmir was saved from the application of Part VII of the Constitution and was reserved the right to frame a separate Constitution for its government. Provisions were incorporated in Article 370 for the institution of a Constituent Assembly in the State to draw up its Constitution. No other provision of the Constitution of India except Article I was made applicable to Jammu and Kashmir.

The powers of the Parliament to legislate in regard to the State were limited to the matters which were declared by the President of India, in consultation with the Government of the State, to correspond to the stipulations of the Instrument of Accession. The Union Government was reserved the power to exercise jurisdiction in regard to the State in respect of subjects transferred to the Government of India by virtue of the Instrument of Accession. The residuary powers were reserved for the State. The scheme of the divisions of power between the Union and States, embodied by the Constitution of India, was not, therefore, extended to Jammu and Kashmir.

Provisions were incorporated in Article 370 by virtue of which the President of India was empowered to transfer powers to the Union in regard to such other subjects in the Union List, the Concurrent List and the State List of the Constitution of India, which he specified, with the concurrence of the State Government. The President was also empowered to extend to the State, the application of the provisions of the Constitution of India, which were not already made applicable to the

State, with such modifications and exceptions as the President would by order specify. The President was empowered to issue such orders in consultation with the State Government and in case such orders related to the matters specified in the Instrument of Accession with the concurrence of the State Government. If any such orders, which involved the transfer of additional powers to the Union or the application of any further provisions of the Constitution of India to the State, were promulgated by the President before the Constituent Assembly of the State was convened, the consultation and concurrence of the State government were to be placed before the Constituent Assembly "for such decision as it might take".

Article 370 envisaged provisions, which empowered the President of India to declare by public notification that the provisions of the Article would cease to operate or would be operative only with such exceptions and modifications as he would specify. All such notifications were to be issued by the President only on the recommendations of the Constituent Assembly of the State.

An interesting aspect of Article 370 was that it envisaged a perpetual Constituent Assembly in the State, at least, so long as the transitional provisions remained on the Statute Book. The framers of the Constitution presumed, that the temporary provisions, envisaged by Article 370 would last only for a relatively short duration and their operation would hardly extend beyond the time the Constituent Assembly of the State would take to draft the Constitution of the State. The Constituent Assembly of the State was dissolved in 1957, after it had completed the task of framing the Constitution of the State.

Article 370 did not vest any constitutive power in the hands of the President, nor did it vest any such power with the Constituent Assembly of the State. The President, as well as the Constituent Assembly, was empowered to order that the operation of the provisions of Article 370 would cease, or continue with such amendments and exceptions as they would specify. They were subject to the limitations which one placed on the other.

The powers to amend the provisions of Article 370, were vested with the Parliament of India, which was not subject to any limitation imposed by Article 370 or any other provision of the Constitution of India. The

constituent power to amend the Constitution of India in accordance with the procedure laid down by it, is unfettered and cannot be restrained except by an instrument, expressly created by the Constitution. No limitation was placed on the powers of the Parliament to amend Article 370. Even if such a stipulation was incorporated in the Constitution of India and provisions were incorporated in Article 370, which placed limitations on the Parliament of India to amend its provisions, there was nothing which stood in the way of the Parliament to repeal the limitation as well as abrogate or amend the provisions of the Article.

Reference

1. Schedule to the Instrument of Accession.
2. *Sardar Patel's Correspondence*; p. 132.
3. Ibid. p. 262.
4. Ibid. p. 263.
5. Ibid. p. 266-67.
6. Ibid. p. 266.
7. Ibid. p. 267-68.
8. Ibid. p. 269-71.
9. Ibid. p. 269.
10. Ibid.
11. Ibid. p. 272.
12. Nehru to Sheikh Mohammad Abdullah; *Sardar Patel's Correspondence*; Vol. I, p. 226.
13. Ibid. p. 276.
14. Syed Mir Qasim; *Savani Hayat*; (vern.)
15. *Sardar Patel's Correspondence*; Vol. I. p. 274.
16. Draft Article 306-A.
17. Sardar Patel's Correspondence; Vol. I. p. 304-5.
18. Ibid. p. 302.
19. Ibid. p. 305.
20. Ibid. p. 307-8.
21. Ibid. p. 309.
22. Article 370 cl. (2).

Chapter IV

The Constituent Assembly

The National Conference convened a meeting of its General Council on 27 October 1950. The Council was called into session to consider the report of Sir Owen Dixon, the United Nations mediator, appointed to negotiate a settlement on the demiliterisation of the State and the induction of the plebliscite administrator into his office. The General Council condemned the Dixon report and characterised it opposed to the objectives for which the people of the State had reposed their faith in the United Nations. The General Council observed that the "Dixon report, while admitting that the armed intervention of Pakistan constitutes a flagrant breach of international law, accords recognition to the aggressor, firstly, as an equal party and then bestows upon him title to possess the fruits of aggression". The Council voiced its strong disapproval of the suggestions made by Sir Dixon to partition the State and declared that the "territorial integrity of the State must remain inviolate and that, in determining their future the unity and the organic homogeneity of the people should not be broken into artificial compartments."[1]

By another resolution, the General Council issued a mandate to the "Supreme National Executive", to convene a Constituent Assembly in the State, based upon adult franchise and embracing all constituents of the State to determine the future shape and affiliations of the Jammu and Kahsmir State. The resolution stipulated :

> The meeting of the General Council of the All Jammu and Kashmir National Conference views with great concern the wrongs of aggression of which the people of the State continue to

> be victims. The failure, in its opinion is due to the continued concessions given to Pakistan by placing a premium on her intransigence.
>
> The indecision and unrealistic procedure adopted so far has condemned the people of the State to a life of agonizing uncertainty. The All Jammu and Kashmir National Conference is gravely concerned and cannot any longer afford to ignore the perpetration of these conditions of doubt and frustration. In the opinion of the General Council, time has come when the initiative must be regained by the people to put an end to this indeterminate state of drift and indecision. The General Council recommends to the Supreme National Executive of the people to take immediate steps far convening a Constituent Assembly based upon adult suffrage and embracing all sections of people and all the constituents of the State for the purpose of determining the future shape and affiliations of the State of Jammu and Kashmir. In this sovereign Assembly embodying the supreme will of the people of the State, we shall give ourselves and our children a constitution worthy of the tradition of our freedom struggle and in accordance with the principles of New Kashmir.[2]

The resolution of the General Council was apparently aimed to extend support to the Government of India which had rejected the proposals, made by Owen Dixon, the United Nations mediator. However, the Conference leaders were motivated by their own interests to seek the convocation of the Constituent Assembly and vest it with powers to determine the final disposition of the State. The Conference leaders did not favour a plebiscite, for they realised far two well that a vote for Pakistan would spell their doom and if the plebiscite turned in favour of India, their endeavours to organise the State into a separate political identity based on the Muslim majority character of its population would fall through. Evidently, they aimed to use the Constituent Assembly to extricate themselves from their commitments to a plebiscite and at the same time secure extra-constitutional guarantees for the separate political identity they envisaged for the State. The Conference leaders did not hide their intentions. In its resolution the General Council of the Conference, suddenly proclaimed the Interim Government as the "Supreme National Executive" of the people, calling upon it to convene the Constituent Assembly and end the uncertainty of the State. The Conference leaders sought to liberate the Interim Government of its provisional

moorings and establish its pre-eminence over all other political instruments in the State, including those embodied by the Constitution Act of 1939, which governed its function. The Conference leaders sought to vest in the Constituent Assembly, powers which the Constitution of India did not envisage for it and thus impart to it, precedence over the constitutional instruments devised by Article 370 of the Constitution of India. They also attempted to place themselves in between India and Pakistan, in their dispute over the accession of the State and secure the Interim Government a vote on any settlement which the Government of India reached with the Security Council or the Government of Pakistan.

The resolution of the National Conference to Convene the Constituent Assembly was not opposed by the Indian leaders; perhaps they sought to use it to controvert the various pressures which were building upon the Government of India in the Security Council after it had turned down the proposals made by Owen Dixon. However, the inspiration to convene the Constituent Assembly did not come from them. Infact, the resolution caused a lot of concern to the Indian leaders, who lost no time to seek a number of clarifications from the Conference leaders with regard to the exact powers the Conference leaders intended to vest in the Constituent Assembly. The decision to vest powers to determine the future disposition of the State in the Constituent Assembly was formidable and was bound to cast its shadows on the accession of the State to India, which the Indian leaders consistently claimed, had been finally accomplished by the execution of the Instrument of Accession. The Government of India had strongly resisted all attempts to question the accession of the State to India and open fresh options for the future disposition of the State except that the act of the accession was subject to a referendum by which, India was committed to ascertain the wishes of the people of the State after the invasion was ended. This was precisely the ground on which the various proposals made by Owen Dixon had been rejected by the Government of India.

A long correspondence ensued between the States' Ministry and the Interim Government. The Conference leaders informed the Minister of States, Gopalaswami Ayangar, that the Constituent Assembly would function as a sovereign body, and besides taking a decision on the final disposition of the State, determine the future of the Dogra rule and draw up a constitution for the government of the State. The States' Ministry accepted that the Constituent Assembly would be free to draw up a

Constitution for the State, but the decisions taken by the Constituent Assembly would be subject to the accession of the State to India and the commitments which the Government of India had given in this regard. Ayangar conveyed to the Conference leaders that since the Constituent Assembly of the State would draw up the Constitution of the State, it would be necessary to bring about a measure of uniformity in the constitutional provisions which governed the relations between the Union and the State, with the provisions of the Constitution of India which governed the relations between the Union and the other Indian States and the function of their governments. The States' Minister proposed the application of the Constitution of India to the State in regard to citizenship, fundamental rights and related legal guarantees, the principles of state policy, the jurisdiction of the federal judiciary and the powers of the Union Government to deal with emergencies arising out of war and internal disturbance.

The Conference leaders did not approve of the communication of the States Minister. They insisted upon the right of the Constituent Assembly of the State to take whatever decision it deemed appropriate, on the final disposition of the State and claimed that both the accession as well as the commitments the Government of India had undertaken, were ultimately subject to the verdict of the people of the State. The Conference leaders reiterated their earlier stand that the Constituent Assembly would draw up a constitution for the government of the State, and incorporate in it the constitutional provision for citizenship, fundamental rights and the related constitutional guarantees, directive principles of state policy and emergencies arising out of threat of war and internal disturbance. The Conference leaders emphasised that the Constituent Assembly of the State alone was empowered to determine, the final disposition of the State. Ayangar was thrown off his feet and he along with Maulana Abdul Kalam Azad and Rajgopalachari hurried to assure the Conference leaders that they had no disagreement with the views, the Conference leaders held. Nehru, was in London where he had gone to attend the conference of the Commonwealth Premiers. He also wrote to Sheikh Mohamad Abdullah and assured him that he did not dispute the right of the people to determine the future shape of the State and its government. "I have no doubt that the will of Kashmiri people must prevail in regard to every matter and it is they who will decide ultimately every question affecting the State."

The resolution of the National Conference evoked a sharp reaction from the Hindu and the other minorities in the State. In the Kashmir province, where the Hindus and the other minorities, did not possess much numerical strength, the reaction was subdued. But in the Jammu province, the Hindus and other minorities voiced strong disapproval of the Conference resolution to seek a vote from the Constituent Assembly on the accession of the State. The Praja Parishad and the Hindu Sahayak Sabha condemned the resolution as destructive of the accession of the State to India. The Parishad adopted a strongly worded resolution that the accession of the State to India had been finally and irrevocably accomplished and the convocation of the Constituent Assembly would tantamount to its repudiation. The Praja Parishad alleged that the convocation of the Constituent Assembly in the State, to take a fresh decision on accession, was another step towards the independence of the State. Both the Parishad and the Sahayak Sabha rejected the independence of the State and claimed that they would not permit the dissolution of the accession of the State and its separation from India.[3]

On 30 April 1951, Karan Singh, the Regent of the State, issued a proclamation to order the institution of the Constituent Assembly in the State. The proclamation envisaged the convocation of the Assembly on the basis of universal adult franchise and the secrecy of the ballot. The proclamation of the Regent ordered the State to be divided into electoral districts, for the purposes of election to the Constituent Assembly. The proclamation envisaged the appointment of a Delimitation Committee, which would be vested with the powers to delimit the territorial extent of the electoral districts.[4]

The Constituent Assembly was empowered to make its own rules to govern its procedure and the conduct of its business.

The Delimitation Committee was constituted of five members : a judge of the High Court, Justice M.A. Shahmiri who was also appointed the Chairman of the Committee and four other members of the rank of the Deputy Commissioners of the Revenue Department of the State Government. The Praja Parishad demanded representation in the Delimitation Commission, but the demand was not conceded.

For the purpose of delimiting the electoral constituencies, the Delimitation Committee was instructed to take a population of forty

thousand people, as nearly as possible, living in a compact contiguous area with regard to the physical features of the area and its means of communication. The Kashmiri Pursharthi Sabha, which represented the refugees from the occupied territories of the State, demanded the reservation of three seats in the Constituent Assembly for the refugees encamped in Nagrota refugee camp in Jammu. The Sikhs also demanded enhancement of representation in the Constituent Assembly over that, they had in the old State assembly, the Praja Sabha.

The Delimitation Committee took instructions from the Conference leaders. Shahmiri had served the Maharaja more faithfully than many of his officers, but he had shifted his loyalities to the Interim Government, after the change over in the government in 1947. He was appointed the Constitutional Advisor to the Interim Government and was one of the collaborators of the Conference leaders who favoured a separate political identity of the State on the basis of its Muslim majority character.

The total number of the members of the Assembly was fixed at one hundred;, twenty-five of whom were to represent the people in the occupied territories of the State. The Kashmir province was divided into forty three constituencies, the Jammu province into thirty constituencies and the frontier divisions of Ladakh and Baltistan into two constituencies. No delimation of electoral constituencies was made in regard to the territories of the State occupied by Pakistan. The Delimitation Committee rejected the demand of the Pursharthi Sabha seeking representation for the displaced persons from the territories of the State under the occupation of Pakistan emcamped in various refugee camps in Jammu. The Committee also rejected the representation made by the Sikhs for special weitage in the Assembly.

All State-subjects, who were of twenty one years and more in age and who were not subject to any disqualifications laid down by law, and who were entitled to vote were registered in the electoral rolls of the electoral area provided they resided in the area for not less than one week during the two years preceding 1951. Voters could register themselves in any number of constituencies but they could vote in only one electoral constituency. In case a voter cast his vote in more than one constituency, his votes cast in such constituencies were liable to be declared void.

The preparation of the provisional electoral rolls was commenced on 1 December 1950, and the electoral rolls were published on 4 June, 1951. The preparation of the electoral rolls was entrusted to electoral Registrars. Forty one Revising Registrars were also appointed to hear and decide claims in regard to the registration of the voters.

The rules framed for the election to the Constituent Assembly, provided that a candidate could seek election to the Assembly if he was a first class heriditary State-subject and was of twenty five years or more in age on 1, August, 1951. Candidates could not hold any office of profit in the Jammu and Kashmir Government and the Government of India or any local body in the State, except in a cooperative society. People convicted of criminal offences involving a punishment of two years or more and people who had been dismissed from the Government service for corruption were barred from voting unless in both cases, a period of three years or such period as was allowed by the Commissioners had elapsed, since their release or dismissal respectively.

All the Electoral Registrars were appointed from among the Special Tehsildars, who were appointed by the State Government to implement the land reforms. Forty one revising authorities, twenty for the Jammu province, nineteen for the Kashmir province and two for the district of Ladakhs and Baltistan were appointed to receive and decide claims and objections with regard to the provisional rolls of the Constituent Assembly. All the Electoral Registrars and Revising Registrars were the nominees of the National Conference.

In accordance with the election rules, no independent tribunals were provided to settle the disputes arising out of the elections; instead, all such disputes were to be decided by the Constituent Assembly itself. The rules envisaged a warning to the officers of the government against any infringement of the election rules or any interference in the elections. Restrictions were placed on parties and candidates to use communal issues in the elections and incitement of communal feelings and violence were declared punishable offences. The maximum expenditure a candidate was permitted to incur in the elections, was fixed at three thousand rupees. The election rules envisaged provisions in accordance with which separate polling booths were to be provided for the women voters.

Right from the time, the preparations for the elections to the

Constituent Assembly began, the parties and candidates, seeking election to the Assembly in opposition to the official candidates of the National Conference, complained of intimidation and interference. They charged the National Conference of using force and pressure to drive them out of the elections and preventing them from filing their nomination papers. The allegations were largely true and the National Conference cadres, backed up by the State administration, spared no efforts, to scuttle the opposition and push out its candidates from the elections and thus pave the way for a total victory for the National Conference. For the forty one of the forty three constituencies in the Kashmir Province, not a single nomination paper was filed by the candidates in the opposition. In the two, remaining constituencies of Habbakadal in the city of Srinagar and of Baramulla township, nomination papers were filed by Pandit Shiv Narayan Fotedar and Sardar Sant Singh Tegh, an Akali Sikhs leader of the State. However, the two leaders did not remain in the fray for long and both withdrew in protest. Sant Singh Tegh complained of official interference in the elections and alleged that the colour of his ballot boxes, was changed in his absence and his voters were prevented from attending his election meetings by unfair and foul means.

In the Jammu province, Praja Parishad nominated candidates for twenty seven constituencies of the provinces, generally filing nomination papers of more than one candidate for each constituency. Forty one of the forty six nominations filed by the Parishad were rejected in twenty seven constituencies, leaving the Parishad to contest elections in only three constituencies in the province. On 22 September 1951, the Working Committee of the Parishad adopted a resolution condemning the rejection of the nomination papers of the Parishad candidates and gave an ultimatum to the Government to reverse the rejections, failing which the Parishad threatened to boycott the elections. The President of the Praja Parishad Pandit Prem Nath Dogra issued a press statement in Delhi on 6 October 1951, in which he alleged, that:

1. the elections in the two provinces of Jammu and Kashmir were scheduled to be held on different dates to provide the National Conference an advantage over the other parties;

2. the delimitation of the constituencies was undertaken in a manner, which used gerrymandering to turn many Hindu majority constituencies into Muslim majority constituencies;

3. fortune of the forty six nomination papers filed by the Praja Parishad candidates were rejected on false and flimsy grounds;

4. official interference in the elections was widespread and the entire official machinery was geared to help the National Conference.[5]

Prem Nath Dogra met Gopalaswami Ayangar, the Minister of States in the Government of India and urged upon him to take immediate steps to undo the wrong which the National Conference leaders had done in the elections. He repeated the allegations he had made against the Conference leaders and appealed to the Government of India :

(i) to institute an independent judicial enquiry into the rejection of the nomination papers of the Praja Parishad candidates in the twenty seven constituencies in which the Praja Parishad candidates had filed their nominations;

(ii) to appoint a Supreme Court Judge to supervise the conduct of the elections in Jammu in order to assure perfect impartiality;

(iii) to prevent the Government officials from openly working for the National Conference candidates;[6]

Ayangar could do little to put a stop to what was happening in the State. Instead, the Congress leaders joined the National Conference in its condemnation of the Praja Parishad and blamed the Parishad leaders of inciting communalism in the State and helping the elements which were inimical to the Indian interests. Perhaps, the Indian Government deliberately overlooked the dangerous parent of the ruthlessness with which the Conference leaders sought to pack the Constituent Assembly with their cadres and supporters. After frantic but vain appeals to the Indian leaders, the Praja Parishad finally decided to boycott the elections. The Parishad leaders sent a cable to Nehru, Gopalaswami Ayangar and Maulana Sayeed Masoodi, the General Secretary of the National Conference, informing them of their decision to boycott the elections. Maulana Massoodi refuted the allegations, the Parishad made against the Interim Government, and charged the Parishad leaders of opposing the convocation of the Constituent Assembly. He claimed that the Parishad did not enjoy the support of the people in the State and the Parishad leaders had abandoned the contest because they were unnerved by the sweeping

victory the Conference leaders had registered in the province of Kashmir. The Parishad extended its support to the two independent candidates, against the National Conference, in the constituencies of Kahnachak and Akhnoor in the Jammu province. The independent candidates were, however, defeated and the Conference nominees returned from both the constituencies. With seventy three of the Conference nominees having been returned unopposed the victory of its candidates in Akhnoor and Kahnachark, secured the Conference all the seventy five seats in the Assembly.

Double Charge

The Constituent Assembly met in Srinagar on 31 October 1951. Maulana Masoodi, who was also returned unopposed to the Assembly, was unanimously elected the pro-tem Chairman of the Assembly. The next day Gulam Mohamad Sadiq was elected the President of the Assembly. The Assembly was inaugurated by Sheikh Mohamad Abdullah on 5 November 1951. In his inaugural address Sheikh Mohamad Abdullah said :

> You are the sovereign authority in this State of Jammu and Kashmir, what you decide has the irrevocable force of law. The basic democratic principle of sovereignty of the nation embodied ably in the American and French Constitutions, is once again given shape in our midst. I shall quote the famous words of Article 3 of the French Constitution of 1719 : "The source of all sovereignty resides fundamentally is the nation; sovereignty is one and indivisible and imprescriptable. It belongs to the nation."
>
> We should be clear about the responsibilities that this power invests us with. In front of us lie decisions of the highest national importance which we shall be called upon to take. Upon the correctness of our decision depends not only the happiness of our land and people now, but the fate as well of generations to come.[7]

Sheikh Mohamad Abdullah enumerated the basic tasks, which the Constituent Assembly would be called upon to undertake. The foremost of the responsibilities which he claimed, fell upon the Constituent Assembly, was to frame a constitution for the government of the State.

Sheikh Mohamad Abdullah said :

> One great task before this Assembly will be to devise a Constitution for the future governance of the country. Constitution-making is a difficult and detailed matter. I shall only refer to some of the broad aspects of the Constitution, which should be the product of the labours of this Assembly.

Referring to these broad aspects of the Constitution, Sheikh Mohamad Abdullah observed :

> To take our first task, that of constitution-making, we shall naturally be guided by the highest principles of democratic constitutions of the world. We shall base our work on the principle, of equality, liberty and social justice which are an integral feature of all progressive constitutions. The rule of law as understood in the democratic countries of the world should be the cornerstone of our political structure. Equality before the law and the independence of judiciary from the influence of the executive are vital to us. The freedom of the individual in the matter of speech, movement and association should be guaranteed; freedom of the press and of opinion would also be features of our constitution. I need not refer in great detail to all those rights and obligations, already embodied in New Kashmir, which are integral parts of democracy which has been defined as "an apparatus of social organisation wherein people govern through their chosen representatives and are themselves guaranteed political and civil liberties."

Referring to the placement of the State in the Indian federal organisation and the relations between the State and the Union, he said :

> You are no doubt aware of the scope of our present constitutional ties with India. We are proud to have our bonds with India, the goodwill of whose people and Government is available to us in unstinted and abundant measure. The Constitution of India has provided for a federal Union and in the distribution of sovereign powers has treated us differently from other constituent units. With the exception of the items grouped under Defence, Foreign

> Affairs and communications in the Instrument of Accession, we have complete freedom to frame our Constitution in the manner we like. In order to live and prosper as good partners in a common endeavour for the advancement of our peoples, I would advise that, while safeguarding our autonomy to the fullest extent so as to enable us to have the liberty to build our country according to the best traditions and genius of our people, we may also, by suitable constitutional arrangements with the Union, establish our right to seek and compel federal cooperation and assistance in this great task, as well as offer our fullest cooperation and assistance to the Union.

The second important issue, which sheikh Mohamad Abdullah called upon the Constituent Assembly to deliberate upon was the future of the Dogra rule. Abdullah pointed out that the National Conference believed that the "institution of monarchy was incompatible with the spirit and needs of modern times which demand an egalitarian relationship between one citizen and another." He said :

> The supreme task of a democracy is the measure of equality of opportunity that it affords to its citizens to rise to the highest point of authority and position. In consequence, monarchies are fast disappearing from the world picture, as something in the nature of feudal anachronisms. In India, too, where before the partition, six hundred and odd Princes exercised rights and privileges of rulership, the process of democratisation has been taken up and at present hardly ten of them exercise the limited authority of constitutional heads of the States.

Another issue which Sheikh Mohamad Abdullah said, the Constituent Assembly would have to decide, was the nature of compensation which would be paid to the landowners whose estates had been resumed under the "land to the tiller," policy of the Interim Government. He told the Assembly :

> The third major issue awaiting your deliberations arises out of the Land Reforms which the Government carried out with vigour and determination. Our "land to the tiller" policy brought light to the dark homes of the peasantry; side by side, it has given rise to the problem of the landowners demand for compensation. The nation

> being the ultimate custodian of all wealth and resources; the representatives of the nation are truly the best jury for giving a just and final verdict on such claims.

The most important issue which Sheikh Mohamad Abdullah pointed out, the Constituent Assembly of the State would have to settle, was, that pertaining to the accession of the State. Sheikh Mohamad Abdullah told the Assembly that the Cabinet Mission had left three options open for the States : accession to India, accession to Pakistan and the assumption of independence. Sheikh Mohamad Abdullah Said :

> The Cabinet Mission Plan has provided for three courses which may be followed by the Indian States when determining their future affiliations. A State can either accede to India or accede to Pakistan, but failing to do either, it still can claim the right to remain independent. These three alternatives are naturally open to our State. While the intention of the British Government was to secure the privileges of the Princes, the representatives of the people must have the primary consideration of promoting the greatest good of the common people. Whatever steps they take must contribute to the growth of a democratic social order wherein all invidious distinctions between groups and creeds are absent. Judged by this supreme consideration, what are the advantages and disadvantages of our States' accession to either India or Pakistan or of having independent status?

Sheikh Mohamad Abdullah dwelt in detail on the advantages and disadvantages, the three alternatives had, and called upon the Constituent Assembly to take a decision which would be for the good of the State. "As a realist" Sheikh Mohamad Abdullah said, "I am conscious that nothing is all black or all white, and there are many facets to each of the propositions before us." Enumerating the "merits and demerits of the States accession to India", Sheikh Mohamad Abdullah told the Assembly that it was the "kinship of ideals which determined that strength of ties between two states". He said that the Indian National Congress had consistently supported the cause of "States People freedom", and the Indian Constitution idealised the objectives of secular democracy based upon justice, freedom and equality which provided the Muslims of the State the guarantee of their security in future." The national movement in our State naturally gravitates towards these

principles of secular democracy". Sheikh Mohamad Abdullah pointed out further that the Interim Government had undertaken land reforms which would not have been possible in the "Landlord-ridden Pakistan" and the economic prospects of the State were closely bound with India. "Potentially", he told the Assembly," we are rich in minerals, and in the raw materials of industry; we need help to develop our resources. India, being more highly industrialised than Pakistan, can give us equipment, technical services and materials. She can help us too in marketing. Many goods also which it would not be practical for us to produce here--for instance, sugar, cotton cloth and other essential commodities--can be got by us in large quantities from India." Listing the merits of accession to Pakistan, Sheikh Mohamad Abdullah told the Assembly, that more dependable roads and waterways of the State led to Pakistan not India, which would hamper trade and commerce of the State. He also expressed his fears that communalism posed a threat to the Muslims in India and if India turned into a religious state in future, the interests of the Muslims would be jeopardised. "Certain tendencies have been asserting themselves in India" Sheikh Mohamad Abdullah told the Assembly, "which may in future convert it into a religious state wherein the interests of the Muslims will be jeopardised. "This would happen," he added," if a communal organisation had a dominant hand in the Government, and Congress ideals of the equality of all communities were made to give way to religious intolerance" He pointed out further that Pakistan was a Muslim state and a large majority of the people of the State were Muslims. Sheikh Mohamad Abdullah ruled out accession to Pakistan on the ground that Pakistan was a feudal state, economically backward and politically retrograde and oppressive. Besides the accession of the State to Pakistan would effect the future of one million non-Muslims of the State as there was no place for them in Pakistan. "Any solution" he told the Assembly, "which will result in the displacement or the total subjugation of such a large number of people will not be just or fair, and it is the responsibility of this House to ensure that the decision that it takes on accession does not militate against the interests of any religious group."

Examining the alternative of independence of the State, Sheikh Mohamad Abdullah made certain interesting observations. He said :

> The third course open to us has still to be discussed. We have to consider the alternative of making ourselves an Eastern Switzer-

> land, of keeping aloof from both states, but having friendly relations with them. This might seem attractive in that it would appear to pave the way out of the present deadlock. To us, as a tourist country it could also have certain obvious advantages. But in considering independence we must not ignore practical considerations. Firstly, it is not easy to protect sovereignty and independence in a small country which has not sufficient strength to defend itself on our long and difficult frontiers bordering so many countries. Secondly, we must have the goodwill of all our neighbours. Can we find powerful guarantors among them to pull together always in assuring us freedom from aggression? I would like to remined you that from August 15 to October 22, 1947, our state was independent and the result was that our weakness was exploited by the neighbour with whom we had a valid Stand-still Agreement. The State was invaded. Where is the guarantee that in future too we may not be victims of a similar aggression?

The inaugural address delivered by Sheikh Mohamad Abdullah brought to surface the divergently different views the Conference leaders harboured about the accession of the State and the constitutional relations between the State and the Indian Dominion. The Government of India had offered to hold a referendum in the State to ascertain the wishes of the people of the State in regard to accession, but it had consistently refused to accept operatives for such a referendum which repudiated the accession of the State to India. The investiture of any authority in the Constituent Assembly of the State, which was independent of the Constitution of India, virtually repudiated the accession of the State to India and conflicted with the stand, India had taken in the Security Council.

The Conference leaders read the events which had led to the partition of India in their own way. The Cabinet Mission did not propose the division of India and the creation of two dominions : India and Pakistan; nor did it visualise any alternatives to the accession of the States, which recognised their independence. The Cabinet Mission plan envisaged a United India, of which the Indian States formed an integral part.

The partition of India, envisaged by the Mountbatten Declaration of June 3, 1946, did not envisage independence of the Indian States. The partition plan, later embodied in the Indian Independence Act, provided

for the withdrawal of the British Paramountcy. The dissolution of the Paramountcy liberated the Indian States from the protection of the British Crown, but it did not vest them with any more powers than they exercised under the Paramountcy.[8]

The Jammu and Kashmir States acceded to India in accordance with the processes underlined by the partition. Maharaja Hari Singh had exhausted the alternatives available to him under the provision of the Indian Independence Act. The commitments made by the Government of India at the Security Council were not pronounced on behalf of the State of Kashmir; at least, Pakistan and the Security Council did not recognise them to be so. The attempts made by the Conference leaders to vest in the Constituent Assembly of the State, powers which did not rightfully belong to it, conflicted with the claims of both India as well as Pakistan.

The problem of the Indian State was not confined to the rights and obligations of the Paramountcy alone and the alternatives which the British sought to secure them. The future of the States was of crucial importance to the unity of India. The partition separated the Muslims from India but the partition did not envisage the division of the princely India or its separation from India. The All India Congress Committee unequivocally repudiated the claim of any State to assume independence.[9] The Committee emphasised that the relationship between the Government of India and the States would not be exhausted by the lapse of the British Paramountcy.

The Muslim League took the stand that Paramountcy reverted to the States after the transfer of power, leaving them free to take any course of action they preferred in their relations with the two dominions. However, both, the Vicerey and British Government refused to accept the position the League adopted. Mountbatten gave a rebuff to the League, when he addressed the Princes on 25 July 1947, and told them plainly that they could not escape integration with the rest of India and the British Government would neither be prepared to offer aid nor accept the independence of any State.[10] "My scheme" Mountbatten told the Princes, "leaves you with all practical independence you can possibly use and makes you free of all those subjects which you cannot possibly manage on your own. You cannot run away from the Dominion government which is your neighbour any more than you can run away from subjects for whose welfare you are responsible."[11]

The National Conference, virtually reiterated the demands of the Muslim League in respect of the States and sought to take the position in respect of Kashmir, which Mohamad Ali Jinnah had taken with regard to the Indian Princely States. Indeed, by virtue of the partition, the Indian States had been vested with technical independence, but they were all the same, a part of India, politically, administratively, economically and geographically. Introducing the Indian Independence Bill in the House of Lords, Pathic Lawrence, the Secretary of the State for India admitted that the States were not an integral part of India but they could not afford to remain out of it. "But, apart from the political relationship between the States and British India", He told the House of Lords," there have grown up a vast number of economic and financial agreements, matters of common concern--posts and telegraphs, customs, transit, railways--and it would be disastrous to India if these arrangements were terminated on the transfer of power". The decision about the States was not, therefore, solely in the hands of the British, as perhaps the National Conference leaders visualised. The future of the States depended upon their history and their political relations with the rest of the country, which had evolved with the Paramountcy.

The Government of India too was an important factor to determine the future of the States. The rulers of the States, could not visualise their future in isolation from India and that was precisely what the experience in Junagarh and Hyderabad proved. The Indian States were not subject to partition; neither the Muslim Rulers not the Muslim subjects of any Indian State were enjoined to opt for Pakistan by the partition plan or the Indian Independence Act. Princes were given the choice to join either of the two dominions without any preconditions and on the basis they chose. It was on that basis Mohamad Ali Jinnah offered the most favoured treatment to some Rajput States in Western India if they chose to accede to Pakistan. The Conference leaders, therefore, attempted to add a fresh dimension to the accession of the Indian States. The fact that Muslims formed a majority of the population of Jammu and Kashmir, did not create any special conditions, for which they could claim the right under the partition plan or the procedures laid down by the Indian Independence Act, to accede to Pakistan or assume independence.

The more involved feature of the claims made by Sheikh Mohamad Abdullah, was his assertion to vest the Constituent Assembly, with powers to revoke the accession of the State to India, and to accede to

Pakistan or assume independence. The Conference leaders, perhaps, refused to countenance the fact that the Constituent Assembly had been instituted by an instrument created by the Constitution of India. They claimed that the Assembly was brought into being by the Interim Government, with inherent and original powers derived from the people of the State, who did not form a part of the people of India. The Conference leaders, in effect, sought to vest in the Constituent Assembly of the State, a separate charge, which was independent of the Constitution of India.

The doctrine of double charge, Sheikh Mohammad Abdullah evolved, had two serious implications :

(i) The Constituent Assembly was independent of the Constitution of India and exercised inherent powers, which it did not derive from the Constitution of India.

(ii) The claim that the Constituent Assembly possessed the right to determine the finality of the accession of the State, virtually amounted to the repudiation of the accession of the State to India.

The doctrine of double charge accosted the Government of India with another situation, which was more anamolous. In case a separate charge was recognised in the Constituent Assembly of the State, the competence of the Union and the applicability of the Constitution of India would be simultaneously limited to the terms specified by the Constituent Assembly of the State, a position which the Conference leaders were seeking to establish. Any such position would not only exclude the jurisdiction of the Union in regard to the State, but close for ever the possibility of modifying the provisions of the Constitution of India in regard to the State. The recognition of inherent powers in the Constituent Assembly of the State was also bound to destroy the precedence of the Constitution of India and reduce all federal instrumentalities to utter helplessness. The Federal Government would eventually be left with no remedies in case the Constituent Assembly of the State transgressed its limits and violated the Constitution of India. In view of the fact that the original jurisdiction of the Supreme Court of India was not applicable to the State, the conflicts which involved constitutional procedure, were bound to arise and prove catastrophic and ultimately lead either to the termination of the special provisions envisaged for the

State or the disintegration of the federal relations between the State and the Union. The denoument came sooner than expected and the Interim Government in the State was dismissed and the special provisions for the State modified to clearly define the scope of the powers, the Constituent Assembly exercised, subordinating it completely to the instrumentalities created by the Constitution of India.

On 7 November 1951, the Constituent Assembly set up several committees to examine various aspects of the constitutional organisation of the State and report to the Assembly. In the committees were included the Basic Principles Committee and the Drafting Committee of the Constitution of the State and the Advisory Committee on Citizenship and Fundamental Rights. Mirza Afzal Beg, who moved the resolution for the appointment of the Advisory Committee on Citizenship and Fundamental Rights told the Assembly that the proposed Committee would report on the qualifications of the citizens of the State and the fundamental rights they would be guaranteed. Beg said that the fundamental rights incorporated in the Constitution of the State would be designed in accordance with the rights which were incorporated in the constitutions of the democratic states.

Jammu Agitation

The convocation of the Constituent Assembly and the pronouncements, the National Conference made, in and outside the Assembly, estranged the Hindus and the other minorities further. In the Jammu province, the distrust sunk deeper and the Praja Parishad movement gathered wide support among the Hindus in the province. The policies, the Conference leaders followed, narrowed their support base among the Hindus and the other minorities, driving the Conference to depend solely upon the Muslims, mainly those of the Kashmir province. The Praja Parishad movement drove the wedge deeper and in the course of time, the communal conflict inherent in the commitments to Muslim precedence, came to surface.

On 15 January, the students of the Prince of Walces College in Jammu staged a demonstration protesting against the hoisting of the National Conference flag on the college building. They complained that the flag of the Conference was a party flag and therefore, it could not take the place of the national flag or the flag of the State. The demonstrations

infuriated the National Conference leaders, who ordered severe punitive action against the students of the college. The students retaliated by proceeding on an indefinite hunger-strike. The situation worsened and the protest demonstrations organised against the action of the government turned violent. The State Government came down upon the students with a heavy hand and the police resorted to firing at a number of places in the Jammu city. The situation deteriorated further and the army had to be called out to quel the disturbances. A seventy-two hour curfew was clamped on the Jammu city. The Interim Government blamed the Praja Parishad of having instigated the agitation. The Parishad denied having any hand in the demonstrations and demanded the institution of an independent enquiry into the causes of the disturbances. Several leaders of the Parishad, including the President of the Parishad, Pandit Prem Nath Dogra, were arrested.

While the conflagration in Jammu was still smoldering, the Head Lama of Ladakh, Kaushak Bakula, a member of the Constituent Assembly of the State presented a long memorandum to the Prime Minister of the State, Sheikh Mohamad Abdullah. Kaushak Bakula demanded the inclusion of statutory provisions in the Constitution of the State by virtue of which Ladakh would become a federating unit of the State so long Jammu and Kashmir remained in India. He urged upon the Premier that a separate Legislative Assembly of fifteen members, with an executive council responsible to it, should be set up to conduct the government and administration of Ladakh. Kaushak Bakula demanded that Ladakh should bear the same relation to the State that the State bore to India. He pointed out that the Buddhists of Ladakh were different from the rest of the people of the State in race, culture, religion and language and being represented by one member in the Assembly, they had little or no voice in the shaping of their future. The Head Lama demanded that in case the proposals to reorganise Ladakh into a federating province of the State were not accepted, a statutory advisory committee of ten members should be elected on the basis of joint electorates to advise the State Government in regard to Ladakh. Kaushak Bakula emphasised that no measures should be taken by the Constituent Assembly of the State which affected the economic, political and religious life of the people of the province without the approval of the statutory advisory committee which be had proposed for Ladakh.

(ii) the National Conference was working to establish dominance of the Muslim majority over the government and the politics of the States, which was bound to relegate the Hindus and the other minorities in the State, a million and quarter of people, constituting almost half of the population of the State, to a second rate citizenship and a life of servillance;

(iii) the Interim Government had, right from its inception, vigouusly reorganised property relations in the State to ensure Muslim dominance over its economic organisation;

(iv) the Interim Government had followed a persistant policy of excluding the Hindus from the administrative organisation of the States;

(v) The Interim Government had imposed an embargo on the admission of Hindus to educational institutions, grant of scholarships to them and their nomination to technical colleges inside and outside the State; and

(vi) the Hindus and the other minorities favoured the application of the Constitution of India to the State in its entirety.

Ayangar apprised the Conference leaders of the concern of the Government of India about the developments in the State. He told them that the Government of India would not be able to support the demand of the autonomy of the State which was based upon communal preferences. Ayangar advised the Conference leaders not to get committed to theocratic ideals and instead adopt policies which aimed at the integration of the various communities in the State on the basis of equality and justice. Ayangar further asked the Conference leaders to take a more considerate view of the student agitation in Jammu and release the Parishad leaders and other students to restore normalcy in the province.

The State Government released the Praja Parishad leaders and the students who had been imprisoned during the agitation. The release of the leaders had a soothing effect on the ruffled tempers in the province and the student agitation subsided gradually. However, Ayangar mission administered a jolt to the Conference leaders, who had received unquestioned support from the Government of India in whatever action they had

The communal polerisation caused the Indian leaders considerable anxiety. They realised the dangers in the alienation of the major communities in the State and the advantage Pakistan could take of any Muslim distrust which grew in consequence. However, their efforts to deal with the crisis were feeble. They denounced the Praja Parishad agitation but did not muster courage to tell the Conference leaders that they could not carry the Hindus and the other minorities with them so long they followed the policy of communal precedence. Obviously the Hindus and the other minorities were not prepared to accept a separate political identity of the State which was placed outside the constitutional organisation of India and which was based upon the communal precedence of the Muslims. They had fought for the freedom of India, shoulder to shoulder with their fellow countrymen, opposed the partition with all their might and paid for their professions more heavily than their Muslim compatriots. Many of them entertained fears that the communal precedence was bound to conflict with the secular integration of India and ultimately lead to the cessession of the State from India.

On 24 March 1952, Mirza Afzal Beg, the Chairman of the Basic Principles Committee unfolded in the Constituent Assembly the scheme of autonomy, the National Conference visualised for the Jammu and Kashmir State. He said that Jammu and Kashmir would be constituted into an "autonomous republic within the Indian Union, with a separate President, National Assembly, Judiciary, Regional Autonomy and separate citizenship". Beg's exhortations draw sharper reaction from the minorities in the State, and deepened the distrust in the Jammu province further.

In April 1952, Nehru sent Gopalaswami Ayangar to Jammu to make an assessment of the situation on the spot and help in the restoration of normalcy there. In Jammu, a number of delegations met Gopalaswami. Delegations, representing Hindus and the Sikhs of both the provinces, and the Buddhists of Ladakh also met Nehru's emissary. The Hindus delegations told Gopalaswami that :

(i) the Hindus did not approve of the autonomous constitutional position, which the National Conference sought for the State, because such a loose relationship between the State and the Union, would eventually lead to the cessation of the State from the Indian Union.

taken in the State. The Muslim leaders of the Conference expressed strong resentment against Ayangar's visit to the State and charged the Government of India of interference with the internal affairs of the State. They claimed that the people o the State, who they unmistakably identified with the Muslims, would not accept the secular integration of the State with India, which would effect the Muslim majority character of the State.[12] They also claimed that the Constituent Assembly of the State, was not subject to any operatives which were not devised by the Interim Government and therefore, the Assembly was free to determine the institutional basis of the future constitution of the State. Some of the Conference leaders claimed that the Muslims in the State, had supported the accession of the State to India on the condition that Jammu and Kahsmir would be preserved its separate political identity and the Muslim majority character of its population. Several Muslim leaders of the Conference, including Sheikh Mohamad Abdullah claimed, further, that the Muslims of the State had repudiated Pakistan, mainly because the Muslim League had refused to recognise the separate political identity of the State and opted to join India on the assurance that the State would not be integrated with the rest of India. In truth, the assertions made by the Conference leaders were untenable. The League leaders had refused to meet the Conference emissaries, which were sent by Sheikh Mohamad Abdullah to negotiate a reconciliation with the League shortly before the armies of Pakistan invaded the State.

In a few days after Ayangar left the State, the Conference leaders struck back. On 10 April 1952, Sheikh Mohamad Abdullah, addressing a public meeting at Ranbirsing Pora, a small township in the Jammu province, situated on the borders of Pakistan, launched a scathing attack on the demand for the integration of the State into the political organisation of India. He characterised the demand for the application of the Constitution of India to the State as "unrealistic, juvenile and insane" and pointed out that the people who sought the integration of the State with India and the termination of its separate political identity, "did not appreciate the realities of the situation which faced them in the State." Sheikh Mohamad Abdullah claimed that the Muslims were apprehensive of communalism, which was still rife in India. "No one can deny" he said "that communal feeling still persists in India. Many Kashmiris are apprehensive about what will happen to them and their position, if, for instance, something happens to Pandit Nehru." He said further, "If a special position was not secured for Kashmir in the Indian Constitution,

how can we convince the Muslims in Kashmir that India does not interfere in the internal affairs of Kashmir?'' Sheikh Mohamad Abdullah emphasised, ''We have acceded to India in regard to defence, foreign affairs and communications in order to have a sort of internal autonomy.''[13]

Sheikh Mohamad Abdullah emphasised that if there was resurgence of communalism in India and if the people in the State were denied the right to shape their destiny, the accession of the State to India would end. In an address to a huge congregation of Muslims at the famous Muslim shrine at Hazartbal in Srinagar he said, that the people of Kashmir were not prepared to renounce their cherished goal of freedom and the ideology of the National Conference, the futhurnace of which they had offered their blood and sweat during the last two decades. He told the congregation that Kashmir had acceded to India in respect of only defence, foreign affairs and communications and the people of the State possessed complete freedom in their internal affairs and enjoyed absolute rights to shape their own destiny in accordance with their will. Sheikh Mohamad Abdullah said ''Those who are raising the slogan of full application of Indian Constitution to Kashmir are weakening the accession of the State. They are the same people who massacred Muslims in Jammu. These slogans naturally cause suspicion in the minds of the Muslims of the State''. Sheikh Mohamad Abdullah emphasised that he had not surrendered to the Muslim communalism of Pakistan and he would not surrender to Hindu communalism in India.

A more clear exposition of the National Conference outlook was made by Sheikh Mohamad Abdullah in the Constituent Assembly on 25 April 1952. He said that the Constituent Assembly had the unfettered right to :

(i) determine the final disposition of the State in regard to accession;

(ii) determine the future of the rule of the Dogra dynasty;

(iii) frame the constitution of the State on all matters not transferred to the Union by virtue of the Instrument of Accession.

(iv) determine the relationship between the State and the Union of India.

On 10 June 1952, the Basic Principles Committee submitted an interim report, which recommended the abolition of the Dogra rule and the replacement of the Ruler by a chief executive, who was appointed from among the people for a fixed tenure. In its report the Committee observed :

> It is the considered view of the Committee that sovereignty does and must reside in the people and that all power and authority must flow from the expression of their free will. The State and its head, respectively symbolise this sovereignty and its centre of gravity. The Head of the State represents the authority vested in him by the people for the maintenance of their rights. The promotion of the vital principle of constitutional progress makes it imperative that this symbol of state power should be subject to the vote of the people. The Committee therefore, strongly feels that consistent with the democratic aspirations of the people of the State the office of the Head of the State should be based upon the elective principle and not upon the principle of heredity. This would afford opportunities to all citizens to rise to the highest point of authority and position, with the support and confidence of the people. The spirit of equality and fraternity required by democracy, demands that in no sphere of state activity should a citizen be debarred from participating in the progress of his country and the advancement of its ideals and traditions. It is clear that the hereditary principle in the appointment to any office of power curtails the peoples choice and to that extent, restricts their right to elect a suitable person of outstanding merit and personal qualities to that position. The process of democratisation will not be complete till the highest office of the State is thrown open to the humblest of the land and in this manner, the Head of the State will be repository of the unbound respect, confidence and esteem of the people.[14]

The Committee concluded that there must be a sense of finality about the decision in regard to the issue of the Head of the State and accordingly recommended that the hereditary rule of the Dogras be terminated and the Head of the State be elected by the people of the State. Sheikh Mohamad Abdullah told the Assembly that the hereditary rule of the Dogras was incompatible with democratic principles as well as the aspirations of the people of the State. He told the Assembly that the

National Conference had decided to replace the Ruler by a chief-executive, who was elected by the people of the State. Abdullah made certain interesting observations in the Assembly in regard to the proposals to end the Dogra rule. He said :

> However, the Committee has made the recommendation for the termination of this hereditary rule in the light of the desires of the people, who under the guidance of National Conference, have sacrificed their lives, have gone to jails and put up in narrow cells inhabited by serpents and scorpions. Hundreds of women folk have been dishonoured, hundreds made to crawl on their bellies and thousands martyred by shedding their blood. It is the saying of the leaders that freedom cannot be achieved by requesting but by struggle. Only that nation attains freedom which sheds its blood for this cause. This again cannot be achieved by begging. Freedom can be obtained only when the people of Jammu, Kashmir and Ladakh, nay of the whole State, make sacrifices in the manner in which lakhs of people like Luther have struggled for their liberation. I want to make it clear to you that this issue has not cropped up under some sentiment of vengeance or because the Raja fled at a time when catastrophe came. It is not even because we were imprisoned and now we have gained power so we should wreak vengeance on him. I want to say to the world that sovereignty belongs to the people and not to an individual.

On 12 June 1952, the report of the Basic Principles Committee was unanimously adopted by the Constituent Assembly. The resolution of the Assembly stipulated that :

(i) the Head of the State would be elected by the Legislative Assembly and after having been elected recognised by the President of India;

(ii) the Head of the State would hold office for a period of five years;

(iii) the Head of the State would be designated as the Sadar-i-Riyasat;

(iv) the method of election, qualifications and other matters pertaining to the office of the Head of the State would be prescribed in the State Constitution;

(v) the Sadar-i-Riyasat would exercise such powers as were vested in him by the State Constitution;

(vi) the Constituent Assembly would in due course provide a suitable remedy in respect of violation of the Constitution or gross misconduct by the person for the time being holding the office of Sadar-i-Riysat.[15]

After the report of the Basic Principles Committee was adopted by the Assembly, Durga Prashad Dhar, who also was returned to the Constituent Assembly unopposed, moved a resolution in the Assembly, praying that instructions be issued to the Drafting Committee to draw up appropriate proposals for the implementation of the recommendations of the Basic Principles Committee. The resolution stipulated :

> This Assembly resolves that the recommendations contained in the Interim Report of the Basic Principles Committee, as adopted by the Assembly, be implemented and for this purpose the Drafting Committee be directed to place before this Assembly appropriate proposals in the form of a resolution, within a period of one month from the date of the passing of this resolution.[16]

The Government of India did not approve of the proposal the Constituent Assembly of the State made with regard to the replacement of the Ruler of the State by a President of the State who was elected in a manner the Conference leaders prescribed. The Conference leaders were accordingly informed that changes in the constitutional organisation of the State, the Conference leaders proposed, would be inconsistent with the provisions of the Constitution of India. They were also told that any changes in the constitutional organisation of the State, which the Constituent Assembly proposed, would inevitably involve the integration of the State in the constitutional structure of India, in order that the instruments created by the Constituent Assembly did not conflict with the imperatives, the Constitution of India envisaged. Nehru stated in the Indian parliament :

> Now this position might well have lasted some time longer, but for the fact that the Constituent Assembly of Kashmir came into existence and came into existence with our goodwill and with our consent. Now it is sitting to draw up its constitution. When it is

> drawing up its constitution it has to be in some precise terms; it cannot be fluid. Therefore, the question arose that nothing should be done by the Constituent Assembly of Jammu and Kashmir State, which does not fit in with our Constitution, which in no sense is contrary to it or conflicts with any part of it. That is why this question now arose to consider.[17]

A delegation of the Conference leaders was despatched to Delhi to clarify the Conference stand on the constitutional issues which the Government of India had raised. The delegation was headed by Mirza Afzal Beg and included Syed Mir Qasim, the Secretary of the Basic Principles Committee and M.A. Shahimiri, the Constitutional Advisor to the Constituent Assembly of the State. The delegation was later joined by the other senior leaders of the National Conference, including Sheikh Mohamad Abdullah, Maulana Masoodi, Bakhshi Gulam Mohamad and Gulam Mohamad Sadiq.

The Conference leaders had many reasons to propose the removal of Maharaja Hari Singh and his Regent Yuvraj Karan Singh and provide for an executive instrument in place of the Maharaja, which was instituted by the Interim Government. Obviously, they sought to eliminate the sole factor in the Government of the State, which was still outside their reach. The Conference leaders were aware of the fact that both Hari Singh and the Government of India did not favour the reorganisation of the State into a separate and independent political identity based upon the Muslim majority character of its population. They intended to install one of their ranks in place of the Maharaja, as the President of the State, and remove from the Government of the State, a vital instrument, which the Government of India could use to smother the Interim Government, in an eventuality in which the National Conference attempted to force issues on it.

By now Nehru was disillusioned about the United Nations and had abandoned his hope to get the invading armies of Pakistan evacuated from the parts of the State occupied by them. He had painfully realised that the negotiations for truce and demilitarization had ultimately led to the consolidation of the Pakistan's hold on the territories of the State which fell on the other side of the cease-fire line. He had also realised that the delicately poised balance, which formed the basis of the Indian position in the State, had been considerably debilitated by the United Nations mediation, which had been deliberately protracted by Pakistan

to demolish the Indian influence in the State. Nehru was also aware of the deep distrust in the State which the policies followed by the Conference leaders had generated and the efforts, which were being made by a section of the Conference leadership to take advantage of the political instability in the State to convert it into a second Muslim republic.

In the deliberations between the Conference leaders and the representatives of the Government of India, the Conference leaders were told by the central leaders that :

(i) any changes in the constitutional organisation of the State would necessitate the integration of the State into the constitutional organisation of India and the application of the provisions of the Constitution of India to the State except in regard to the State Government, for which the constitutional provisions would be drawn up by the Constituent Assembly of the State;

(ii) The constitutional provisions drawn up by the Constituent Assembly of the State for the State Government should not be inconsistent with the basic structure of the Constitution of India.[18]

The Conference leaders were also told that piecemeal decisions could not be taken on isolated constitutional issues, as they came up for consideration from time to time and it would be necessary to consider the entire constitutional organisation of the State, in order that the constitutional arrangements inside the State as well as between the State and the Union of India were given some form of uniformity and finality. It was agreed upon to evolve a broad structure of the future constitutional organisation of the State, which could form the basis of a constitutional settlement between the State and the Government of India.

The special provisions of the Constitution of India, envisaged by Article 370, were of temporary and provisional nature. The decisions taken by the Constituent Assembly of the State, involved the reorganisation of the entire framework of the constitutional provisions of Article 370. The very act of replacing the Maharaja by a President of the State, who was installed into his office by the Interim Government, impinged upon the provisions of Article 370 and necessitated amendments in it. By virtue of Article 370, the State Government was construed to mean, "The Maharaja of Jammu and Kashmir, acting on the advice of the Council of

Ministers for the time being in office under the Maharaja's proclamation dated the fifth day of March 1948.'' The Conference leaders virtually sought to change the provisions of Article 370, to secure a constitutional organisation of the State, which would not be subject to any provisions of the Constitution of India, including the provisions of Article 370. This was exactly what the Indian leaders were not ready to accept. They had, though to their disadvantage, accepted the constitutional arrangements envisaged by Article 370, as a transitional measure. But they were not prepared to allow the Interim Government to formalise the exclusion of the State from the constitutional organisation of India, permanently. The Government of India was committed to replace the temporary provisions envisaged by Article 370 by permanent constitutional arrangements after normalcy was restored in the State and the State was integrated with the rest of the nation like the other Indian States.

The Conference leaders disapproved of the proposals the representatives of the Government of India made. Sheikh Mohamad Abdullah insisted upon the settlement of the various constitutional issues, one after the other, as they came up for the consideration of the Constituent Assembly of the State. He told the Indian leaders that the Interim Government would prefer to finalise a settlement with regard to the abolition of the Dogra rule first and then take up the matter with regard to the payment of compensation to landowners, who were expropriated from their estates. After the two issues were settled, he told them, the Interim Government would take up the other constitutional issues for a settlement one after the other.

The Indian leaders agreed to accept the abolition of the Dogra rule and the replacement of the Maharaja by a President of the State, who would be elected for such term and in such manner, as would be determined by the Constituent Assembly. They also agreed to allow the State to have a separate national flag and the Constituent Assembly, free to draw up a constitution for the residium of authority vested with the State. However, they proposed the application of the Constitution of India to the State in respect of citizenship of India, fundamental rights and related constitutional guarantees, jurisdiction of the Supreme Court of India, emergency powers of the President of India, and the financial relations between the Union and the States.

The Conference leaders refused to accept the application of any

provisions of the Constitution of India to the State. They contended that the State had acceded to India in respect of three subjects only viz; defence, foreign affairs and communications, leaving the residuary sovereignty with the State, which could not be subject to any constitutional instruments, except those devised by the State itself.[19] They claimed that the Constituent Assembly of the State had plenary powers to draw up a Constitution for the entire residium of sovereignty vested with the State and determine the form and nature of the constitutional instruments it sought to create, independent of the imperatives, the Constitution of India envisaged. They emphasised that except for the delegation of powers with regard to which the State had acceded to the Dominion of India the State retained its separate and independent political identity, and it could not be included in the constitutional organisation of India. The Conference leaders stressed that the Jammu and Kashmir did not form a part of the republic of India, and consequently it was not subject to the jurisdiction of the Union Government.

Nehru pleaded with Sheikh Mohamad Abdullah and Beg to accept the application of the provisions of the Constitution of India to the State with regard to citizenship, fundamental rights, the jurisdiction of the Supreme Court and the financial organisation of the Union. He assured them that the application of the provisions would provide the people of the State the benefit of the rights and liberties and the legal protection the Constitution of India envisaged and eliminate the psychological barriers which divided the people of the State from the people of the rest of India. He also pointed out to them that the inclusion of the State in the financial organisation of the Union would enable the Interim Government to stabilise the delipidated economy of the State and ensure it a course of future development.

The Conference leaders agreed to accept that the President of the State, would be recognised by the President of India after he was elected, but they refused to accept the application of any other provisions of the Constitution of India to the State. They told the Indian leaders that the application of the common Indian citizenship to the State, would adversely effect the domicilliary rules embodied by the State-subject Regulations, the Dogra rulers had promulgated in the State. They expressed the fears that the infringement of the State-subject rules would damage the economic and political prospects of the people of the State who were still economically and educationally backward. They further

told the Indian leaders that the application of the fundamental rights and the jurisdiction of the Supreme Court would prejudice the economic reforms, mainly the land legislation, which involved the acquisition and transfer of land and property on land, and conflicted with the fundamental rights embodied in the Constitution of India. Beg, who was deadly opposed to the application of the fundamental rights to the State, stunned the Indian leaders, when he told them that the extension of the jurisdiction of the Supreme Court of India would impinge upon the personal law of the Muslims in the State. Nehru assured the Conference leaders that the provisions of the Constitution of India in respect of citizenship and fundamental rights would be extended to the State with such exceptions as would save the State-subject Regulations and the land reforms from their effect. He also assured them that the competence of the Supreme Court would be extended to the State only in respect of its original jurisdiction.

Ultimately an agreement was reached between the Conference leaders and the Central leaders, which stipulated that the Maharaja would be replaced by a President of the State, who would be elected in the manner prescribed by the Constituent Assembly of the State and recognised by the President of India. It was agreed upon that the State would have its own flag which the Constituent Assembly of the State adopted. It was also agreed upon that the residuary powers would continue to be vested with the State and the Constituent Assembly of the State would frame the Constitution for the government of the State.

Agreement was also reached with regard to the application of the provisions of the Constitution of India in respect of citizenship to the State with two exceptions :

(i) the State Legislature would be reserved the power to define the Permanent Residents of the State and determine and regulate their special rights and duties "in regard to the acquisition of immovable property, appointments to services and like matters."

(ii) special provisions would be made for the State-subjects who had migrated to Pakistan in 1947, and sought to return to the State for permanent settlement.

Nehru told the Parliament :

> The point was raised by the representatives from Kashmir that certain old privileges dating from several generations past attached to what used to be the State-subjects. These are specially in regard to the acquisition and holding of immovable property, appointment to services, scholarships and the like. Now, honorable members know that Kashmir is supposed to be one of the beauty spots of the world, and apart from being a beauty spot, there are many other things which attract people there. And from olden times the Maharajas, who succumbed to many things that came from the then British government, did not succumb to one thing. They were afraid that the climate of Kashmir and its other attractive features being what they are, that Kashmir might become a kind of colony of the British if they came and settled down there in large numbers. They were afraid of that. So they stuck to one thing that no foreigner could acquire property in Kashmir and they did keep them out. They made rules to the effect that only State-subjects could acquire property. In fact, they have made four different classes of State-subjects for that purpose. Property was given to Class I and Class II. The rules in regard to property still subsist. These are the rules in regard to the property in Kashmir, and everybody in Kashmir, to whatever group or community or region he belongs, wants to uphold these rules; naturally because they are for the benefit of residents of Kashmir, whether Hindus or Muslims. They are afraid that people from India or elsewhere, rich people and others might come and buy up property there and thereby gradually all kinds of vested interests would grow up in property in Kashmir on behalf of the people from outside. We thought that this was also the existing law there and the existing law prevails under Article 370 of the Constitution which I have just read. We thought it was perfectly juritificable feeling on their part, and that acquisition of property in Kashmir State should be protected on behalf of people there.

Agreement was also reached in regard to the application of the fundamental rights and the related legal safeguards to the State. It was agreed upon that the fundamental rights would be made applicable to the State with exceptions so that the land reforms undertaken by the Interim Government were not effected.

A settlement was also reached with regard to the extension of the original Jurisdiction of the Supreme Court of India to the State. It was agreed upon that the jurisdiction of the Supreme Court in regard to the enforcement of the fundamental rights would also be extended to the State. In the process of the negotiations the Government of India had proposed that the board of Judicial Advisors would be abolished and the appellate jurisdiction of the Supreme Court should be extended to the State. The Board of Judicial Advisors was Constituted by Maharaja Hari Singh in 1939, and the Board exercised highest appellate jurisdiction in the State and heard cases in appeal in both civil and criminal matters. The Conference leaders however, expressed their inability to accept the proposals the Government of India made and preferred to retain the Board of Judicial Advisors for the time being.

In regard to the existing division of powers between the Union and the State, the two Governments agreed that the residuary powers would vest with the State. But in regard to the financial relations between the Union and the State, the two Governments agreed that a measure of financial integration of the State was necessary. It was agreed, that modalities of the financial integration would be determined after more detailed deliberations in the subject were undertaken.

Agreement was also reached in respect of the extension of the powers of the President of India to grant reprieve and commutation of punishments. During the deliberations, the Government of India proposed the extension of the powers of the President of India to the State with regard to emergencies arising out of war, aggression and internal disturbance. The Government of India offered to make an exception with regard to emergencies arising out of the internal disturbance, to the effect that a state of emergency on account of internal disturbance could be imposed in the State, "at the request or with the concurrence of the Government of the State." The Conference leaders agreed to accept the modified position but asked for some more time to consider the issue further.

Nehru sought an assurance from the Conference leaders that before the constitutional changes embodied by the Delhi Agreement were implemented the Constituent Assembly of the State would adopt a resolution which reaffirmed the accession of the State. Nehru stressed that a ratification of the accession of the State by the Constituent

Assembly would put many controversies about the Constituent Assembly and its powers to determine the future disposition of the State, at rest. An understanding was also reached that the changes in the constitutional organisation of State and the constitutional changes between the Union and the State underlined by the Agreement, would be implemented simultaneously. Understanding was also reached that though the rule of the Maharaja and the Regency of his son, Karan Singh, would be abolished and replaced by a President of the State, Karan Singh would be elected the first President of the Jammu and Kashmir.

Sheikh Mohamad Abdullah placed the Delhi Agreement on the table of the Constituent Assembly on 11th August 1952. In his long address to the Assembly he gave a version of the agreement which varied from the actual agreement in several of its stipulations. He told the members of the Assembly that the agreement envisaged tentive decisions and broad principles of a settlement between the two governments; the Government of India and the Government of the State. He said :

> Since the changes proposed by this Assembly involved corresponding adjustments in the Indian Constitution, the Government of India desired that it should have time to discuss with our representatives other matters pertaining to the constitutional relationship of our State with the Union. During the last stage of these discussions, it became necessary for me and some of my other colleagues in the Government, to participate in the talks. I am now in a position to inform the House that certain broad principles have been laid down and certain decisions have been tentatively arrived at between the two Governments.

Sheikh Mohammad Abdullah further said :

> Here I would like to point out the fact that Article 370 has been mentioned as temporary provision in the Constitution does not mean that it is capable of being abrogated, modified or replaced unilaterally. In actual effect the temporary nature of this Article arises merely from the fact that the power to finalise the constitutional relationship between the State and the Union of India has been specially vasted in the Jammu and Kashmir Constituent Assembly. It follows that whatever modifications, amendments, or exceptions, that may become necessary either to Article 370 or

> any Article in the Constitution of India in their application to the Jammu and Kashmir State, are subject to the decisions or this sovereign body.[20]

An inconclusive debate followed Sheikhs' address to the Constituent Assembly. Many of the members of the Constituent Assembly expressed serious misgivings about the stipulations of the Delhi Agreement, which they feared would ultimately pave the way for the abrogation of Article 370 and the integration of the State into the constitutional organisation of India. Though in muffled words, they voiced strong disapproval of the application of the provisions of the Constitution of India to the State in regard to citizenship, fundamental rights, the powers and jurisdiction of the Supreme Court and the division of powers between the Union and the State.

Beg assured the members of the Assembly that Article 370 of the Constitution of India was provisional in nature mainly because a final constitutional settlement between the State and the Union of India depended upon the decision of the Assembly about the future constitutional organisation of the State. In view of the fact that the Conference leaders claimed for the Constituent Assembly, the right to determine the final disposition of the State, Beg overtly suggested that the provisional nature of Article 370 emanated from the provisional nature of the accession of the State to India and the special constitutional provisions envisaged by Article 370 were subject to the veto of the Constituent Assembly of the State. Beg said :

> Nobody here could entertain the idea that Kashmir will be dragged to the position of Part B. States. I may make it clear on the floor of the House that Kashmir will never come to the position of Part B States. We have good reasons for that.

Within days after the Delhi Agreement was placed before the Constituent Assembly, a widespread campaign against the Agreement was unleashed in the rank and file of the National Conference. The campaign was mainly inspired by the senior leaders of the Conference, among them particularly those who had concluded the Delhi Agreement. Most of them expressed their dissatisfaction with the stipulations of the agreement and alleged that the application of the provisions of the Constitution of India with regard to Indian citizenship. Fundamental

rights and the related legal guarantees and the jurisdiction of the Supreme Court of India, would affect the Muslim majority character of the State.

On 19th August 1952, the Drafting Committee of the Constituent Assembly of the State presented its report to the Assembly on the future of the Dogra rule and the replacement of the Maharaja by a President of the State, designated Sadar-i-Riyasat."

A resolution which embodied the proposed changes and amendments in the Jammu and Kashmir Constitution Act of 1939, was appended to the report of the Drafting Committee. The report of the Committee along with the resolution was approved by the Constituent Assembly on 21 August 1952. The resolution stipulated that :

(i) the Head of the State would be a person so recognised by the President of India on the recommendation of the Legislative Assembly of the State;

(ii) the Head of the State would hold office during the pleasure of the President of India;

(iii) the recommendation of the Legislative Assembly would be made by election;

(iv) the Head of the State would remain in office for a term of five years;

(v) the Head of the State would exercise the powers and undertake functions that were exercised by the Maharaja of the State.[21]

Uneasy days passed by and the Interim Government did not initiate any move in the Constituent Assembly to adopt measures to implement changes in the constitutional relations between the State and the Union, envisaged by the Delhi Agreement. Instead, fresh intelligence reached the Government of India that Sheikh Mohammad Abdullah was no longer inclined to propose Karan Singh, as the first President of the State, but he was fast preparing to instal a Harijan Hindu, a member of the Constituent Assembly, who also had been elected uncontested, the Sadar-i-Riyasat of the State. Nehru, who felt severely sore over the developments in the State, conveyed to the Conference leaders that the Government of India would recognise no one else except Karan Singh,

the Sadar-i-Riyasat or the President of the State and if the Conference leaders were not prepared to accept that, the Government of India would not allow the termination of the Regency of Karan Singh.[22]

Silence fell on the scene for sometime.

Praja Parishad Agitation

The reaction of the Hindus of Jammu to the Delhi Agreement was actively hostile. The Praja Parishad condemned the Delhi Agreement and alleged that the constitutional arrangements envisaged by the Agreement would add to the uncertainty which prevailed in the State. The Parishad leaders further alleged that the Delhi Agreement would perpetuate the provincial dominance of the Kashmir over the regions of Jammu and Ladakh and aggravate the communal imbalances which the Interim Government had fostered in the State. The Praja Parishad listed eight demands for which, the Parishad declared, it would launch a civil disobedience movement in the province. The demands stipulated that :

(i) the Jammu and Kashmir State should be fully integrated in the Indian Union;

(ii) the State should be brought within the constitutional organisation of the Indian Union and the application of the Constitution of India should be extended to the State in its entirety;

(iii) the jurisdiction of the Supreme Court of India should be extended to the State without any reservations;

(iv) the customs barriers between the State and the Indian Union should be abolished.

(v) the division of powers between the State and the Union should be determined by the Seventh Schedule of the Constitution of India;

(vi) free and fair elections should be held to the Constituent Assembly of the State;

(vii) an impartial tribunal of enquiry should be instituted to investigate into the corruption charges against the Interim Government;

(viii) in case the State was not fully integrated into the Indian Union and its constitutional relations with the Union continued to be based upon limited accession, Jammu province and Ladakh should be fully integrated with the Indian Union.[23]

The Praja Parishad movement evoked widespread response in India. The major Hindu political organisations, the most powerful among them, the Bhartiya Jana Sangh pledged their support to the demand, the Parishad made. Most of the Hindu organisations in India, supported the demand of the Parishad for the integration of the State into the Indian Union and expressed fears that the exclusion of the State from the political organisation of India, would ultimately lead to disasterous consequences for the State. They charged the Interim Government and the Government of India of seeking to add to the deep political instability prevailing in the State which the exclusion of the State from the mainstream of Indian political life had engendered.

The Interim Government came down upon the Praja Parishad Movement with a heavy hand. The Conference leaders condemned the agitation as an expression of Hindu communalism and a part of the wider resurgence of Hindu reaction in India. They alleged that the Praja Parishad was opposed to the autonomy of the State, and sought to end the separate political identity of the State by integrating it with the rest of India. The Conference leaders further alleged that the Parishad movement was aimed to forestall the decision of the Interim Government to abolish the Dogra rule and undo the political and economic reforms the Interim Government had undertaken.

On 8 November 1952, two Praja Parishad leaders, Prem Nath Dogra and Sham Lal Sharma were put under arrest. Their arrest sparked off a virulent agitation against the Interim Government all over the Jammu province.

In November 1952, the Constituent Assembly terminated the Regency of Karan Singh and elected him the Sadar-i-Riyasat of the State. When Karan Singh arrived in Jammu, after having been installed the Sadar-i-Riyasat, he was greeted with black flags by the Praja Parishad demonstrators, who charged him of having betrayed the trust, which had been reposed in him as the Regent of the State.[24]

Having accomplished the removal of Maharaja Hari Singh from the scene, the Conference leaders took no steps to implement the other stipulations of the Delhi Agreement. Sheikh Mohammad Abdullah instructed the Drafting Committee of the Constituent Assembly to go ahead with its work, without giving it any direction to incorporate the stipulations of the Delhi Agreement in the draft proposals, the Committee evolved. Instead Sheikh Mohammad Abdullah advised the Drafting Committee to reexamine the political issues about which a settlement had been reached at Delhi and then report to the working Committee of the National Conference. To neutralise the political arrangements arrived at Delhi further, Sheikh Mohamad Abdullah sent several drafts, which he had asked his close associates, both inside and outside the National Conference to prepare, to the Drafting Committee for its consideration. Most of the drafts, underlined the repudiation of the Delhi Agreement, total exclusion of the State from the political and constitutional organisation of India and the reduction of the constitutional relations between the State and the Union to the terms of a bilateral political commitment between the Interim Government and the Government of India, which would not be subject to any instrumentalities created of the Constitution of India. Mir Qasim wrote later :

> Sheikh Sabib instructed us to prepare drafts of the Constitution of the State. After a great deal of cutting and pruning several drafts were drawn up. Beg Sahib drew up a separate draft. Professor Bhan also prepared a draft. Sheikh Sahib asked us to place all the drafts before the Working Committee (of the National Conference), Before the drafts were presented in the Working Committee we went to Jammu to meet Bakhshi Sahib and showed him the drafts. Bakhshi Sahib said that the drafts would set India ablaze, because the Indian people would clearly see that Kashmir wanted to leave India. A crisis would follow.[25]

The Drafting Committee placed the various draft Constitutions before the Working Committee. After an inconclusive debate in the Working Committee, Sheikh Mohamad Abdullah appointed a Legal Expert Committee of the Working Committee, to examine the drafts. The Committee was Constituted of Mirza Afzal Beg, Gulam Mohammad Sadiq, Syed Mir Qasim, Abdul Gani Goni and Gulam Mohiudin Hamdani. None of the Hindu or the Sikh members of the Working Committee of the Conference were appointed to the Committee.

The work of the Committee was far from smooth. It was wound up before it was able to evolve any framework of the Constitution of the State.[26]

In May 1953, Nehru arrived in Srinagar. He had a long meeting with Sheikh Mohamad Abdullah. The Indian Prime Minister expressed his disapproval of the many pronouncements which the Conference leaders had made on the constitutional organisation of the State. He told Sheikh Mohamad Abdullah that the Government of India had no intention of interfering with the internal affairs of the State so long the State was a part and parcel of India. However, he emphasised that the Government of India did not approve of the separatist trends which had grown in the National Conference and the State Government. Nehru gave a note to Sheikh Mohamad Abdullah on the future constitutional organisation of the State. In his communication, Nehru re-emphasised the need to integrate the State into the constitutional organisation of the State and extend the application of the Constitution of India to the State in respect of citizeship, fundamental rights, the jurisdiction of the Supreme Court of India and the division of powers between the Union and the State on the basis of Delhi Agreement. Nehru conveyed to the Conference leaders that the Government of India strongly disapproved of the fissiparous and separatist trends which had made their appearance in the State. Nehru chastised the Conference leaders for having severved from their commitment to Indian unity and promoting ideas about the independence of the State. Nehru condemned the independence of the State as an extremely dangerous proposition. He conveyed to Sheikh Mohamad Abdullah that he would prefer to handover the State to Pakistan on a platter rather than support its independence and allow it to be turned into a centre of international intrigue, and endanger both India and Pakistan.[27]

Later Nehru met the Working Committee of the National Conference. Bakhshi Gulam Mohamad and Gulam Mohamad Sadiq apprised Nehru of the deep division in the Conference leadership on a number of basic issues involved in the constitutional relationship between the State and the Union. They informed Nehru that they, on their part, supported a more integral relationship between the State and the Union and readjustment in the State-Centre relations. Nehru informed both Bakhshi and Gulam Mohamad Sadiq of what had transpired between him and Abdullah and acqainted them with the contents of the note he had delivered to the latter.[28]

After Nehru's departure, the distance between the Conference leaders and the Government of India widened rapidly. Sheikh Mohamad Abdullah and his associates in the Conference made no secret of their bitterness against the central leadership. The Conference leaders suffered from an incredible sense of self-rightiousness and believed that they had justifiably fought Hindu communal forces in India, which sought to subject the Muslims in the State to the dominance of the Hindus. They did not hide their feelings that the support the Praja Parishad movement had received was aimed to destroy the autonomy of the State, which they claimed was the guarantee of secularism in the State. They were also convinced that the accession of the State was ultimately subject to their vote and if and when they chose, they could walk out of India, and since the Government of India had committed itself to a referendum, it could not stand in their way.

An insight into the Conference outlook can he had from a statement, which Maulana Sayeed Masoodi, General Secretary of the National Conference, issued to the press on 6 August 1953, three days before the Interim Government headed by Sheikh Mohamad Abdullah was dismissed. He stated :

> The fact of the matter is that there is a deleberate attempt on the part of those who do not view Kashmir's present position with favour, to cloud the real issue so as to escape responsibility for the harm that has been caused to the Indo-Kashmir relationship by the support given to the recent agitation for Kashmir's merger with India. The real issue, it should be realised, is that there are people in India, who are not prepared to see Kashmir maintain its existing position. They are angry that Kashmiris should remain aloof both from India as well as Pakistan; one should not work oneself up necessarily to see this view being expressed. Instead, it should be examined dispassionately. Then only can there be possible a correct appraisal of the situation in Kashmir. If Kashmiris rose as one man against Pakistan, it was because they saw that, that country wanted to force them into a position which they were not prepared to accept. If today demands are made in India which endanger the present autonomous position of the State and, realisisng this danger, the people of Kashmir feel inclined towards a third alternative, it is not they who should be blamed for it but those who are the root cause of it. It will not do

> to point out the defects of this or that alternative. What is required is to remove the causes which have led to this line of thinking. All those people in India, who are honestly interested in Kashmir and India thrive together on the basis of a willing, not forced association should come into the field and organise the Indian public opinion against this movement for the merger of the State. The communal and reactionary forces, within the state who have made Sheikh Abdullah's task difficult should be exposed and no quarter given to them. The difficulties referred to by Sheikh Sahib in his recent speeches should be appreciated clearly and honest efforts made to remove them. Above everything else those who are thinking in terms of solving the difficulties by creating dissension within the National Conference should realise that the people of Kashmir, who the National Conference has the privilege to represent, will not countenance any such move from any quarter. Such tactics as these are not going to help a solution of the problems confronting India and Kashmir. Never before has there been a greater need for a clear understanding of the Kashmir problem as it is today.[29]

Evidently, Masoodi exhorted the Indian people to organise Indian opinion against the integration of the State in the Indian Union, and to provide an opportunity to the people of the State to search fresh alternatives to the accession of the State to India. Masoodi claimed that the people of the State were inclined to keep aloof from both India and Pakistan and their views deserved to be examined dispassionately. He alleged that the reactionary forces in the State had made the task of the National Conference difficult and demanded that such forces should be exposed and given no quarter. Masoodi urged upon the people of India, who were honestly interested in a willing and not forced association between India and the State to remove the difficulties the National Conference faced in its endeavour to secure the State a position of equidistance from India and Pakistan.

In the earrly hours of the morning on 9 August 1953, Karan Singh dismissed Sheikh Mohamad Abdullah from his office. A second Interim Government was instituted in the State under the leadership of Bakhshi Gulam Mohamad. Sheikh Mohamad Abdullah, Mirza Afzal Beg and several of their close associates were promptly put under arrest.

Second Interim Government

Bakhshi did not take long to consolidate his hold over the National Conference. In September, the General Council of the Conference approved the change in the Conference leadership and pledged its support to Bakhshi, and elected him the President of the National Conference in place of Sheikh Mohamad Abdullah. On 5 October, the Constituent Assembly adopted a vote of confidence in the Interim Government headed by Bakhshi. Five members of the Assembly, including Sheikh Mohamad Abdullah and Mirza Afzal Beg, who were in jail, did not participate in the deliberations of the Assembly.

On 20 October 1953, two months after the second Interim Government was instituted, the Constituent Assembly of the State reconstituted the Basic Principles Committee, the Advisory Committee on Citizenship and Fundamental Rights, the Steering Committee and the Drafting Committee. The Delhi Agreement, concluded between the Conference leaders and the Central Government in July 1952, was referred to the reconstituted Committee for their reconsideration. A Joint Sub-Committee of the two Committees, the Basic Principles Committee and the Advisory Committee on Citizenship and Fundamental Rights, was constituted on 4 January 1954, to examine the stipulations of the Delhi Agreement and submit to the Constituent Assembly, proposals for its implementation. The joint Sub-Committee presented its report to a joint session of the Basic Principles Committee and the Advisory Committee on Citizenship and Fundamental Rights on 22 January 1954. On 3 February 1954, Syed Mir Qasim presented the reports of the Basic Principles Committee and the Advisory Committee on Citizenship and the Fundamental Rights to the Constituent Assembly. The report of the Basic Principles Committee stipulated the broad principles on which the constitutional organisation of the State would be based. The report of the Advisory Committee on Citizenship and Fundamental Rights envisaged specific recommendations for the implementation of the Delhi Agreement in regard to the constitutional relations between the State and the Union. The report of the Basic Principles Committee stipulated that ;

(i) the Constitution of the State would enshrine sovereignty of the people, equality, democracy and social justice.

(ii) the people of the State would be secured the right to develop their respective languages, culture and script and fraternal understanding among them would be promoted;

(iii) the Government of the State would be based upon executive responsibility and the Council of Ministers charged to aid and advise the Sadar-i-Riyasat would severally and jointly be responsible to the State Legislature.

(iv) the State Legislature would be elected on the basis of universal adult franchise;

(v) the Constitution would provide for one independent judiciary and a Public Service Commission; and

(iv) the official language of the State would be Urdu, and English would continue to be used for official purposes.[30]

The Committee further recommended the application of such provisions of the Constitution of India to the State, as were ancillary to the accession of the State to the Indian Dominion and such other provisions as were specifically envisaged by the Delhi Agreement. The Committee observed :

> When the dominion of India became a republic, the relationship of the State with the Union was embodied in Article 370 of the Union Constitution. The States' accession to the Union entails certain responsibilities on the centre fcr protecting the interests of the State and also for its social and economic development. In order to enable the centre to discharge its responsibilities which devolve upon it under the Constitution, those provisions of the Constitution of India which may be necessary for this purpose should be made applicable to the State in an appropriate manner. While preserving the internal autonomy of the State all the obligations which flow from the fact of accession and also its elaboration as contained in the Delhi Agreement should find an appropriate place in the Constitution. The Committee is of the opinion that it is high time that finality in this respect should be reached and the relationship of the State with the Union should be expressed in clear and precise terms.[31]

The Advisory Committee on Citizenship and Fundamental Rights proposed the extension of the provisions of the Constitution of India to the State, with regard to citizenship. The Committee recommended that the extension of Indian citizenship to the State would be subject to the conditions that the domicillary State-subject rules, in force in the State, would not be prejudiced.

The Advisory Committee recommended the application of the fundamental rights envisaged by the Constitution of India, to the State, with such modifications and reservations as would suit the requirements of the State. The Committee recommended the extension of the provisions of the Constitution of India with regard to the fundamental rights and related constitutional guarantees subject to the condition that the rights and privileges of the State-subjects embodied by existing State-subject rules and the rights and privileges conferred upon them by the State Legislature in regard to acquisition and ownership of property, employment in the State government as well as the restrictions imposed on Indian citizens, other than State-subjects by the State Legislature to acquire and own property in the State and claim employment, would not be affected and abridged on the ground that such reservations and rules were inconsistent with the fundamental rights envisaged by the Constitution of India.

One member of the Basic Principles Committee and the Advisory Committee on Citizenship and Fundamental Rights, Abdul Gani Goni, presented a dissenting report to the Constituent Assembly.

Goni was a close associate of Sheikh Mohammad Abdullah and Beg and hailing from the Muslim majority district of Doda in the Jammu province, he was a strong proponent of the separate Muslim identity of the State. In his note of dissent Goni proposed :

(i) the State of Jammu and Kashmir should be reserved the right to secede from the Union of India;

(ii) the jurisdiction of the Supreme Court should not be extended to the State and the Board of Judicial Advisors should be retained as the highest court of appeal in the State;

(iii) the people be vested with the rights to recall their representatives from the State Legislature.

The reports of the Basic Principles Committee and the Advisory Committee were approved by the Constituent Assembly on 6 February 1954. Abdul Gani Goni walked out of the Assembly in protest.

Subsequently, the Drafting Committee was instructed by the Constituent Assembly to formulate proposals for the implementation of the recommendations of the Basic Principles Committee and the Advisory Committee on Citizenship and Fundamental Rights. The Drafting Committee presented its report to the Constituent Assembly on 11 February 1954.

The Committee made comprehensive recommendations for the application of the provisions of the Constitution of India to the State, with reservations and exceptions. The Committee proposed the application of the Constitution of India to the State in respect of its preamble; citizenship; fundamental rights and the related constitutional remendies; elections to the Parliament; executive powers of the President of India and his powers in regard to war and internal disturbance; legislative relations between the Union and the States and the official language of the Union.

The recommendations of the Drafting Committee were approved by the Constituent Assembly, and communicated to the President of India. On 14 May 1954, the President of India incorporated the recommendations of the Constituent Assembly in Article 370 of the Constitution of India by a special proclamation.[32]

The provisions of the Constitution of India pertaining to the territories of the Union were extended to the State with the exception that no bill could be introduced in the Parliament to reorganise the territories of the State, increase or diminish its area or alter its name without the consent of the State Government. Indian citizenship was extended to the people of the State, who after having migrated to Pakistan, returned to the State on a permit for settlement or a "permanent return", issued by authority of law made by the State legislature. The fundamental rights to equality before law, protection against discrimination on the basis of casts, creed, race, and place of birth, and the rights embodying the equality of opportunity in regard to public employments were extended to the State

without any reservations. The right to freedom and right to liberty were extended to the State, subject to stringent restrictions. The State Legislature was reserved powers to impose restriction on the right to liberty and freedom on grounds, which otherwise were not specified in the Constitution of India. The fundamental rights envisaging protection against exploitation and prohibition of all forms of forced labour, traffic in human beings, and employment of children in factories and hazardous occupations, were also extended to the State without any reservations. The right to property was extended to the State, subject to a number of limitations. The application of the provisions envisaging the right to property did not affect any existing laws pertaining to property in the State nor did these provision affect the right of the State to impose any levy or tax or penalty or make any law for the promotion of public health or prevention of danger to life or property or regulate evacue property. The laws already made by the State Legislature were also saved from the effect of the fundamental rights to property, for a period of five years. Rights envisaging freedom of conscience and religion were also made applicable to the State. Provisions with regard to protection of the minorities and their rights to manage educational institutions were also extended to the State.

Provisions of the Constitution of India with regard to the Government of India were made applicable to the State with the following exceptions :

(i) the representatives of the State to the House of the People would be nominated by the President of India on the recommendations of the State Legislature;

(ii) the power of the Parliament, to extend the appellate jurisdiction of the Supreme Court, would be limited to the extent that any such extension could only be made on the request of the State Legislature;

(iii) the Supreme Court was not vested with powers in regard to the State to issue directions, orders and writs for purposes not pertaining to the enforcement of the fundamental rights;

(iv) the powers of the Auditor and Comptroller General would not be made applicable to the State.

The scheme of the division of powers between the sSate and the Union was not altered by the Presidential order and the State continued to retain the residuary powers of legislation. However, the Union Parliament was empowered to legislate in regard to the state on almost all the subjects enumerated in the Union List except Central Bureau of Intelligence, Preventive Detention, Court of Wards, High Court and the extension of its jurisdiction, Corporations, weights and measures, mines and minorilogy, labour, oil fields, Census, Ancient monuments, inter-State migration, elections to the Parliament of India, Audit and Accounts. In respect of the administrative relations between the Union and the States, the provisions of the Constitution of India, which imposed administrative obligations on the States, were extended to the State with certain reservation. The States were required to exercise their administrative power to ensure compliance with directions given by the Government of India and give full faith and credit to the public acts records and proceedings of the Union including judicial proceedings. The Jammu and Kashmir State was, however reserved the right to determine the manner in which and the conditions under which the acts, records and the proceedings of the Union would be proved. An additional obligation was assumed by the State in so far as it undertook to acquire and requisition land and property on behalf of the Union.

Provisions of the Constitution of India with regard to the official language of the Union were extended to the State in regard to :

(i) official language for communication;

(ii) official language for communication between one State and another State and between the States and the Union;

(iii) proceeding of the Supreme Court.

Provision of the Constitution of India, with regard to the powers of the President of India to proclaim a state of emergency due to war and external aggression were extended to the State, but provisions pertaining to the emergencies arising out of internal disturbance and constitutional breakdown, were not extended to the State.

Provisions of the Constitution of India with regard to the amendment of the Constitution were applied to the State with the exception that the

amendment made in the Constitution of India would extend to the State only after a Presidential order to that effect was issued with the concurrence of the State Government.

The Presidential order of 1954, was a half-way measure, which envisaged partial inclusion of the Jammu and Kashmir into the constitutional organisation of India and met the disapproval of the Muslims as well as the Hindus and the other minorities, in the State. The Presidential order was condemned by the Muslims as a measure aimed to integrate the State into the Indian political organisation and destroy its independent and separate Muslim identity. They blamed the Government of India as well as the second Interim Government, of having dissolved the first Interim Government headed by Sheikh Mohamad Abdullah, to undo the independence of the State and subject the Muslims to the dominance of the Hindus in India. The middle peasantry of the Muslims in Kashmir, which had replaced the landed aristocracy the Dogras rule had fostered, the new class of Muslims commercial magnates, trading agents, the vast variety of small industrial entrepreneurs, and flanks of the Muslim bureaucracy, which had replaced the administrative cadres of the Dogra regime, disapproved of the Presidential order, because the application of the Constitution of India to the State threatened the vested interest they had acquired in the exclusive sphere of authority and power, the first Interim Government had established in the State.

The Hindus and the other minorities disapproved of the Presidents Order because it envisaged a partial application of the Constitution of India to the State and in fact fell far short of their expectations. The almost, absolute authoritarian reach of the first Interim Government and ravaged the Hindus and the minorities : curtailed their interests in the property relations of the State, excluded them from the State patronage and reduced their political weightage and subordinated their sociological role to the interests of the new Muslim middle class in the State. The Presidential order did not effect the political instruments which the first Interim had evolved and which envisaged a system apart from the political process, the Constitution of India underlined. The Constitution of India reflected the perspective of the Consituent Assembly, which did not accept or uphold communal precedence of the Hindu majorities in India and which accepted political safeguards for the minorities.

In January 1956, an agreement was reached between the Government of India and the State Government on the financial integration of the State. According to the terms of the agreement, the State agreed to receive 55 per cent of the net proceeds of the income tax, 40 per cent of the duties of excise on matches, tobacco and vegetable products and hundred percent tax proceeds of the estates duty, levied and collected by the Government of India in the State. The Government of India agreed to grant to the State financial assistance to bring up the total revenues of the State from these sources to two and a half crores of rupees annually. In accordance with the agreement, the proportional rights in respect of properties and assets of the Post and Telegraph Departments, air transport, railways and the State forces, were taken by the Government of India. The provisions of the Constitution of India, with regard to the financial integration of the State were extended to the State in January 1958.

The provisions of the Constitution of India with regard to the High Courts in the States were partially extended to the State in 1954. In 1957, provisions of the Constitution of India with regard to the removal of the High Court Judges, embodies in Article 218 of the Constitution of India, and the provisions in regard to the restrictions which the Constitution of India placed upon the Judges of the High Courts in the States, to plead before any Court or tribunal, except the Supreme Court of India, were also extended to the State.

Agreement was also reached between the State Government and the Government of India regard with to the extension of the provision of the Constitution of India, pertaining to the Audit and Accounts of the Union, to the State. A resolution was adopted by the Constituent Assembly of the State on 14 November 1957, which proposed the application of the provisions of the Constitution of India with regard to the Auditor and Comptroller General of India to the State. The President's Order, which extended the application of the provision of the Constitution of India with regard to audit and accounts to the State, was issued on 15 February 1958.

Meanwhile the integration of the administrative services of the State came up for discussion between the State Government and the Government of India. An agreement was reached to extend the operation of the administrative services of India to the State. In pursuance of the agreement, the Indian Parliament enacted enabling measures in May 1957, to extend

the provisions of the Constitution of India in regard to the administrative services to the State. In 1959, the provisions of Constitution of India with regard to the powers and the functions of the Election Commission of India, were extended to the State.

The Constituent Assembly of the State completed the task of framing the Constitution of the State in November 1956. The Constitution of the State declared the State an integral part of the Union of India.[33] The executive powers of the State were vested in the Sadar-i-Riyasat, who was elected to his office for a term of five years by the Legislative Assembly of the State and confirmed into his office by the President of India. The Constitution of the State provided for a Council of Ministers, headed by the Prime Minister, to aid and advise the Sadar-i-Riyasat. The Ministers were severally and jointly responsible to the Legislature of the State.[34] The executive and legislative competence of the Government of the State extended to the powers which were not transferred to the Union Government.

In order to further integrate the State in the Indian Constitutional organisation the Constitution of the State was amended in 1965.[35] In accordance with the amendment the office of the Sadar-i-Riyasat was abolished and the provisions with regard to the election, tenure and removal of the Sadar-i-Riyasat were repealed. The provisions of the Constitution of India, with regard to the appointment and tenure of the Governor of the Indian States, were incorporated in the Constitution of the State, which provided for the recognition of an acting Sadar-i-Riyasat, in an enventuality which involved the removal, illness or death of the Sardar-i-Riyasat, were also repealed. Provisions were incorporated in the Constitution of the State, by vieture of which the President was empowere to make arrangements for the discharge of the functions of the Governor, in contingencies which were not provided for the Constitution of the State.

The provisions of the Constitution of the State with regard to the office of the Prime Minister were also amended. The amendment provided for a Council of Ministers in the State, which was headed by the Chief Minister and not the Prime Minister, like the Council of Ministers in the other Indian States.[36]

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Chapter V

Federal Jurisdiction

The constitutional provisions envisaged by Article 370 of the Constitution of India and the subsequent Constitution (application to Jammu and Kashmir) Orders, promulgated by the President of India,[1] provide for a partial application of the Constitution of India to the Jammu and Kashmir State. In their application to Jammu and Kashmir, the provisions of the Constitution of India, fall into three categories :

(i) provisions which are not applicable to the Jammu and Kashmir State;

(ii) provisions which are applicable to the Jammu and Kashmir State; and

(iii) provisions which are applicable to the State with exceptions and reservations.

The provisions of the Constitution of India which are saved application in regard to the Jammu and Kashmir State, pertain to the Government of States,[2] the Directive Principles of State Policy[3], public services, amendment of the Constitution of India[4] and the powers of the President of India to impose a state of constitutional breakdown in any State which fails to comply with or give effect to any directions given by the Union[5]. The Government of the Jammu and Kashmir State is constituted in accordance with the provisions of the Constitution of Jammu and Kashmir, which has framed by the Constitution Assembly of the State in January,

1957. The Constitution of Jammu and Kashmir incorporates provisions with regard to the Directive Principles of the State Policy and the organisation of the Public Services in the State.[6] Provisions are incorporated in the Constitution (Application to Jammu and Kashmir) Order, 1954, by virtue of which the amendments to the Constitution of India are made applicable to the State by and order of the President of India by virtue of powers vested in him by Article 370 of the Constitution of India.[7]

The provisions of the Constitution of India, which are applicable to the Jammu and Kashmir State and the provisions which are made applicable to the State with exceptions and reservations are interwoven into a complex pattern of intricate alternatives and specifications. Placed within the broad context of the constitutional processes, the Constitution of India underlines, these alternatives and reservations represent severe deviations from the functional norms, the Constitution of India envisages. Over the years most of these deviations have assumed dimensions which have ultimately supervened the basic structure of the Constitution of India in relation to Jammu and Kashmir. The provisions of the Constitution of India, which apply to the State, with exceptions and reservations, pertain to territories of the Union, Citizenship, Fundamental Rights, Jurisdiction of the High Courts in the State, the elections, Emergency powers of the President and the official language of the Union.

Provisions of the Constitution of India which apply to the Jammu and Kashmir State without any exceptions or reservations pertain to the election, powers and the functions of the President of India, the Union Council of Ministers, election and powers and privileges of the Parliament and the parliamentary procedure, the organisation and powers of the Supreme Court of India, the appointment and functions of the Comptroller and Auditor-General of India and the Union Public Service Commission.

Union Territories

Article I of the Constitution of India defines the territories of the Constitution of India. The First schedule of the Constitution of India defines the territories of the States which comprise the Indian Union. The Jammu and Kashmir State is listed in the First Schedule and the territories

of the State are defined to include the territory which immediately before the commencement of the Constitution of India "was comprised in the Indian State of Jammu and Kashmir". The territories of the Jammu and Kashmir State, at the time the Constitution of India was framed, included the territories of the State of Jammu and Kashmir, with regard to which the Ruler of the State, Maharaja Hari Singh, had executed the Instrument of Accession. The territories of the State defined by the First Schedule, therefore, include areas of the State which were occupied by Pakistan in 1947.

Article I of the Constitution of India is made applicable to the State independent of Article 370 and the State is included in the First Schedule of the Constitution, which describes the territories of India and lists the States of the Indian Union. Article I of the Constitution of India is pivotal to the entire constitutional organisation envisaged by the Constitution of India, as it defines the territories of the Union and describes the basis of its jurisdiction. The Jammu and Kashmir State is, therefore, brought within the territories of the Union and its jurisdiction.

There is an overlapping in Article I and Article 370 of the Constitution of India, in so far as Article 370 also envisages provisions which provide for the application of Article I to the Jammu and Kashmir State. Clause 1(c) of Article 370 stipulates :

"The provisions of Article (1) and of this Article shall apply in relation to that State (Jammu and Kashmir)." The overlapping in the provisions of Article I and Article 370 Clause 1(c) has led to considerable confusion about the main import of the special provisions envisaged by the Constitution of India. It is generally contended that the inclusion of the Jammu and Kashmir State, in the territories of the Indian Union, is accomplished by Article 370 of the Constitution of India and if the provisions of Article 370 are abrogated the application of Article I to the State will immediately cease to be operative and the State will fall out of the territorial jurisdiction of the Indian Union. Many of the Conference leaders including Sheikh Mohamad Abdullah and Mirza Afzal Beg, interpreted the provisions of Article 370, almost in the same manner and Mirza Afzal Beg repeatedly claimed that Article 370 was the only link between the State and India. The leaders of the successive governments as well, claimed that Article 370 was a bridge between the State and India

and if Article 370 was abrogated the State would stand apart from the Union of India.

The Plebiscite Front and the leaders of the cessionist movements in the State added a fresh dimension to the provisions of Article 370. They interpreted Article 370 as a commitment to the conditional accession by the State to India. They claimed that Article 370 was included in the Constitution of India, in pursuance of the commitments made by the Government of India, inside and outside the Security Council, and that the accession of the State would be determined by a reference to the people of the State. In fact, the cessionist contentions received wide approbation and in due course of time hardened into political precepts that the special constitutional provisions envisaged by Article 370 formed a temporary relationship between the State and India and if the provisions of Article 370 were abrogated the accession of the State to India would be nullified.

The constitutional relation between the State and the Union of India has two aspects : One which pertains to the application of Article I of the Constitution of India to the State and the other which relates to the provisions of Article 370. Article I of the Constitution of India describes the territorial jurisdiction of the Union of India and forms the bases for all other instrumentalities created by the Constitution of India. In one respect, therefore, Article I is more sacrosanct than any other provisions of the Constitution of India.

The position, that the Jammu and Kashmir State is ensured in the Constitution of India, by virtue of Article 370, emanates from the basis underlined by Article I. It applies to the State by itself and independently and brings the State within the limits of the territories of the Union and the ambit of its jurisdiction. Article I is an independent constitutional instrument, which does not depend upon Article 370; in fact, instruments created by Article 370 depend upon the provisions of Article I. Evidently Clause 1(c) of Article 370 is redundant and reiterates the fact which is already accomplished by Article I of the Constitution of India. Article 370 describes a jurisdiction which is temporary and transitional. The provisions of Clause 1(c) of Article 370 do not prejudice the nature of Article I in its application to the State and in case Article 370 is abrogated, the applicability of Article I will not be affected. In such an

eventuality the Jammu and Kashmir State will be immediately placed, at par with the other States comprising the Indian Union and brought within the purview of the provisions of the Constitution of India, including those pertaining to the Constitution of the States. The Constitution of the State will simultaneously be set aside and its instruments will cease to be operative in the State.

The provisions of Article 370 are not relevant to the accession of the State and do not form any constitutional commitments in regard to accession. If Article 370 is abrogated, it will not effect the accession of the State, because Article 370 does not accomplish the accession of the State to the Indian Union. Nor does, for that matter of fact, Article I of the Constitution of India accomplish the accession of the erstwhile Indian States to the Indian Union. Even if Article I ceases to be operative the accession of the State will remain uneffected. Article I confirms what the sovereignty of the state of India actually performs. In fact, no Indian State became a part of the State of India, when it acceded to the Dominion of India by virtue of the Constitution of India. The State of India was prior to the Constitution of India. The State of Jammu and Kashmir became an integral part of the State of India, when it acceded to the Dominion of India by virtue of the Instrument of Accession.

The Constitution of India lays down the organisation of the Indian Union, the constitution of its government, the orbit of its authority and the objectives of its action. It does not create the State of India. The State of India came into existence before the Constitution of India was made. The Constitution of India is not constitutive of the State of India, or the sovereignty of India. It does not create the territories of India; it describes the territories of India and defines the jurisdiction of the Indian Union. The territories of India, not defined by Article I also form a part of India. The Constitution of India is therefore only declaratory of the State of India. Obviously, the Jammu and Kashmir State which is a part of the State of India, is also a constituent part of the political structure, the Constitution of India envisages.

The Parliament of India is vested with the power to (i) "form new States, or by separating territories from any States of parts of States, or by merging two or more States or parts of States, or by uniting any territory to a part of any State", (ii) increases the area of any State, (ii) alter the boundaries of any State, or (iv) change the name of any State.[8]

In their application to the Jammu and Kashmir State, the provisions of the Constitution of India with regard to the powers of the Parliament are subject to the conditions that no Bill, seeking to change the area, boundaries and the name of the State can be introduced in either House of the Parliament without the consent of the legislature of the Jammu and Kashmir State.[9]

Citizenship

The provisions of the Constitution of India with regard to citizenship are applicable to Jammu and Kashmir with a number of exceptions. Article 5 of the Constitution of India defines the citizens of India as the persons, who at the time of the commencement of the Constitution, had their domicile in India, provided they were either born in India, or either of their parents were born in India or were residents of India for not less than five years immediately before the commencement of the Indian Constitution. The provisions of Article 5 are applicable to the Jammu and Kashmir State without any exception. The provisions of the Constitution of India with regard to the people who migrated from Pakistan to India are applicable to Jammu and Kashmir with certain reservations. Indian citizenship is granted to people who migrated to India from Pakistan before 19 July 1948, provided they or their parents or any of their grand parents were born in India as defined by the Constitution Act of 1935, and they reside in India since the date of their migration. Citizenship is also granted to migrants from pakistan who migrated to India after 19th July 1948, provided they or any of their parents or of their grand parents were born in India as defined by the Constitution Act of 1935, and they were registered as citizens of India by an officer appointed by the Government of India in the form and manner prescribed by it. Provisions are also made by the Constitution of India for the grant of citizenship to the people of India, who migrated to Pakistan after 1 March 1947, but returned to India before 19 July, 1948, on a permit for resettlement issued by the Government of India. These provisions, embodied in Article 6 and 7 of the Constitution are applicable to Jammu and Kashmir with the exception that the Permanent Residents of the State, who after having migrated to "Pakistan return to the State, are entitled to assume citizenship on a Permit for Resettlement or Permit for Parmanent Return, issued by or under the authority of any law made by the legislature of the State."[10] The permanent residents of the State are defined as the persons :

(i) who were born or whose parents were born in the State and who resided in the territories which were constituted into the Jammu and Kashmir State in 1846;

(ii) Who or whose parents settled in the State before 1885;

(iii) Who or whose parents settled in the State before the year 1911, and acquired immovable property in the State;

(iv) Who or whose parents settled in the State before 14 May 1945, and acquired immovable property in the State;

(v) State-Subjects, who having migrated to Pakistan returned to the State under a Permit for resettlement in the State, issued by or under a law made by the State Legislature;

(vi) State-Subjects residing in territories occupied by Pakistan, who were able to prove that they had migrated to Pakistan after Ist March 1947, and who were issued Permit of Resettlement by or under law made by the State Legislature."

Fundamental Rights

The provisions of the Constitution of India with regard to the fundamental rights apply to the Jammu and Kashmir State with exceptions and reservations envisaged by the Constitution (Application to Jammu and Kashmir) Order, 1954. Before the promulgation of the Constitution Application Order, none of the fundamental rights envisaged by the Constitution of India were available to the people of the State. The Constitution Act of 1939, promulgated by Maharaja Hari Singh, in accordance with which the Interim Government of the State was organised did not provide for any fundamental or basic rights. Many of the limitations which were imposed by the Constitution (Application to Jammu and Kashmir) Order, 1954, on the applicability of the fundamental rights to the State, were in due course of time, done away with. Many of the restrictions still survive.

The Constitution of Jammu and Kashmir provides that "the permanent residents of the State shall have all the rights guaranteed to them under the Constitution of India". Obviously, the Constitution of Jammu

and Kashmir is restrictive to the extent that it stipulates the availability of the fundamental rights to the permanent residents of the State only, leaving out the people of the State who are the citizens of India, but are not the permanent residents of the State. The restrictive content of Section 10 of the Constitution of Jammu and Kashmir, assumes a different complexion in view of the fact that the State Legislature is reserved, by the Constitution of the State, the power to make law "defining or altering the definition of the classes of persons, who are or shall be permanent residents of the State, conferring upon them special rights and privileges and regulating or modifying any special rights and privileges enjoyed by them."

The provisions of Section 10 of the Constitution of Jammu and Kashmir have two principal aspects. First, that the fundamental rights embodied by the Constitution of India are available only to the Permanent Residents of the State and not to the other residents of the State including the citizens of India who are not the Permanent Residents of the State. Secondly, only such of the fundamental rights embodied by the Constitution of India, as are applicable to the State of Jammu and Kashmir, are available to the Permanent Residents. Section 10, therefore, merely reiterates the intention of the Constitution (Application to Jammu and Kashmir) Order, 1954, and seeks to remove any irreconcilability between the Constitution (Application to Jammu and Kashmir) Order, 1954, and the Constitution of Jammu and Kashmir. Section 10 does not create the fundamental rights embodied by the Constitution of India, nor does it create any title to such fundamental rights. The intended effect of Section 10, to restrict the fundamental rights to the Permanent Residents of the State, operates subject to the provisions of the Constitution of India and does not deprive the people of the State, who are excluded from the definition of the Permanent Residents of the State, by any law made by the State Legislature, of the fundamental rights embodied by the Constitution of India and guaranteed to them by the Constitution (Application to Jammu and Kashmir) Order, 1954. To the extent, Section 10 of the Constitution of Jammu and Kashmir impinges upon the fundamental rights guaranteed by the Constitution of India, it loses its effect. The fundamental rights envisaged by the Constitution of India are not conferred on the people of the State by Section 10 of the Constitution of Jammu and Kashmir, but by the Constitution of India as it is applicable to the State by virtue of the Constitution (Application to Jammu and Kashmir) Order, 1954. The fundamental rights available in the State are,

therefore, enumerated within the meaning of Constitution of India and are enforced in the State by the instrumentalities which exercise authority drawn from the Constitution of India.[12]

The fundamental right to equality before law and equal protection of laws, embodied in Article 14; right to protection against discrimination on grounds of religion, race, caste, sex, place of birth, right to protection against any disability, liability or restriction on access to shops, public restaurants, hotels, places of public entertainment, or use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of the State funds or dedicated to the use of general public on grounds of race, religion, race, caste, sex or place of birth embodied by Article 15 and right to equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and protection against discrimination on grounds of religion, race, caste, sex, descent and place of birth are applicable to the Jammu and Kashmir State. However, there are two restrictions which are placed on these rights in their applicability to the State :[13]

(a) In the first place the Constitution of India empowers the State to make special provisions for women, children, socially and educationally backward sections of society, scheduled castes and tribes and reserve appointments and posts for the backward sections of society, which are not adequately represented in the services offered by the State.

(b) In the second place Article 35 added by the President's Order, to the fundamental rights in their application to Jammu and Kashmir, reserves the right to the State of Jammu and Kashmir, to classify Permanent Residents and provide special rights and privileges for them.[14]

The provisions of Article 17, which prohibit untouchability and the provisions of Article 18, which forbid the State to award titles and honours, except the academic and military titles, are applicable to the State without any exceptions.

The right to freedom envisaged by Article 19 is applicable to the State without any restrictions and reservation. Article 19 embodies seven fundamental freedoms: freedom of speech and expression; freedom of

Assembly, freedom of association; freedom of movement; freedom of residence and settlement; freedom of property; freedom of profession, occupation, trade and business.

The right to protection against punishments for ex-post facto laws, protection against prosecution and punishment for the same offence more than once, protection against self incrimination, embodied by Article 20, is also applicable to Jammu and Kashmir without any exceptions and reservations.[15]

The right to life and personal liberty, embodied in Article 21 is applicable to Jammu and Kashmir without exception. However, the right to protection against arbitrary arrest and detention embodied by Article 22, is applicable to the State with two exceptions which pertain to preventive detention and safeguards against arbitrary use of preventive detention. Article 22 provides for preventive detention which is aimed to "prevent the abuse of freedom of anti-social and subversive elements which might the endanger national welfare" of the country. Article 22, further envisages provisions which provide for safeguards against any arbitrary use of preventive detention. No person can be detained except by authority of law providing for preventive detention. No person can be detained for a period exceeding three months. Wherever the period exceeds three months, it must be authorised by an Advisory Board, constituted of Judges of the High Court or persons qualified to be appointed the Judges of the High Court. Preventive detention can be extended to a maximum limit prescribed by law made by the Parliament. The grounds on which detention is affected are required to be communicated to the detenue and he is to be given opportunity to make a representation against his detention at the earliest. Parliament is vested with the power to prescribe by law the circumstances under which detention may be extended beyond three months without obtaining the opinion of an Advisory Board and the procedure to be followed by an Advisory Board in determining cause for extension of detention exceeding three months.

The exceptions admitted in the application of the provisions with regard to the preventive detention to Jammu and Kashmir are :

(i) Entry 3 of the Concurrent List of the Seventh Schedule of the Constitution of India, is not applicable to Jammu and Kashmir State and the Parliament of India is not vest with any concurrent

powers to legislate in regard to preventive detention for reasons of security of the State, the maintenance of supplies and services and persons subjected to preventive detention; and

(ii) the provisions of the Constitution of India with regard to the powers of the Parliament to authorising detention exceeding three months, without obtaining the opinion of the Advisory Boards, determine the maximum period of preventive detention and prescribe procedure to be followed by the Advisory Boards, are not applicable to Jammu and Kashmir and the powers of the Parliament are, instead vested with the State Legislature.

In the application of the provisions of Article 22 to the Jammu and Kashmir State, the State Legislature is vested with powers with regard to prevention detention, which on other State Legislature in India exercises. The State Legislature is armed with considerable power and arbitrary decision in matters of preventive detention. The aim to vest the power to provide for preventive detention in the Parliament is to ensure that the vital issue of preventive detention is not left to the whims and caprices of the local political majorities and the strains of the politics in the States do not undermine the safeguards against arbitrary detention. Obviously, the Parliament of India is likely to visualise the issues of preventive detention from the point of view of national security and not from the narrow focus of the petty and of often the parochial interests of the political parties in power in the States.[16]

The right against exploitation, embodied in Article 23 is applicable to Jammu and Kashmir without any exception. The provisions of Article 24, which prohibit the employment of children of less than fourteen years of age in factories, mines and other hazardous occupation, are also applicable to the State without any reservations.

The right to freedom of faith and religion envisaged by Article 25, and the right to establish and maintain institutions for religious and charitable purposes, the rights of the minorities to manage their own affairs in matters of religion and to own and acquire property and administer such property in accordance with law; are also applicable to the Jammu and Kashmir State without any exception. The right to protection against compulsion to pay taxes, the proceeds of which are appropriated in payment of expenses for the promotion or maintenance

of religion or religious denomination, is also applied to the Jammu and Kashmir State, The prohibition on the provision of religious instruction in education institutions maintained out of State funds, and the right against being compelled to attend any religious instruction imparted in educational institutions, recognised by the State or receiving aid out of State funds, are also applicable tc the State of Jammu and Kashmir with any exceptions.

Article 29, which envisages protection to every section of citizens, having a distinct language, script or culture to preserve their language, culture and script, is applicable to the State without any exception. The rights of the minorities to establish and administer their educational institutions and the right of such institutions to receive aid envisaged by Article 30, are also applicable to the Jammu and Kashmir State.

The right to property, envisaged by Article 31 of the Constitution of India was applied to Jammu and Kashmir with several reservation and exceptions. The right to property was however, expunged from the Constitution of India by the Forty-fourth Amendment. Amendment to the Constitution of India is applied to the State by an enabling order, promulgated by the President of India in accordance with the Constitution (Application to Jammu and Kashmir) Order, 1954. No such enabling order was ever promulgated by the President of India extending the effect of the Forty-fourth Amendment to the State. Consequently the right to property envisaged by the Constitution of India is still applicable to Jammu and Kashmir. In its application to Jammu and Kashmir State, Article 31 provides :

(i) that no person is deprived of his property except by authority of law;

(ii) that property can be acquired for public purposes alone by authority of law "which provides for acquisition or requisition of property for an amount which may be fixed by such law or which may be determined in accordance with such principles as may be specified in such law;

(iii) that no law providing for acquisition of property, and the fixation of the amount payable against such acquisition, can be called in question in any court on the ground that the amount fixed is

inadequate or paid otherwise than in cash. The right to property available to the people of the State is subject to several limitations. The provisions of existing law in the State with regard to the acquisition of property for public purposes and the payment of compensation are not prejudiced by the application of the right to property to the State. The State Legislature is vested with powers to undertake legislation to implement the Directive Principles of State Policy, envisaged by the Constitution of Jammu and Kashmir. No such laws made by the State Legislature can be called in question in any court of law on the ground that they violate fundamental rights envisaged by Articles 14 and 19 of the Indian Constitution in their application to the State.

The State legislature is vested with unrestricted powers to undertake legislation providing for acquistion of property, the mode and manner of the payment of compensation for the property acquired, the acquisition of landed estates and the extinguishment and modification of interests in corporations and mining and mineral products. Landed estates are defined by the Presidential Order as the land which is occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pastures including:

(i) building sites on such lands;

(ii) trees standing on such lands;

(iii) forest lands;

(iv) wooded waste;

(v) areas under fields floating over water;

(vi) sites of Jandars and Gharats;

(vii) Jagirs, Inams, Maufis, Mukararies and other land grants, excluding building sites near towns or villages and land reserved for municipalities, notified areas or town planning.

The Constitution of India provides for constitutional remedies for the enforcement of the fundamental rights. The provisions of the Constitution

with regard to such remedies are applicable to the Jammu and Kashmir State with two modifications. First, in regard to the Jammu and Kashmir State the Parliament of India cannot empower any other court to issue writs and orders in Jammu and Kashmir, for the enforcement of fundamental rights. A special clause, sub-clause (2-a), is added to Clause 2 of Article 32 and the Hight Court of Jammu and Kashmir is vested with the power to issue to any person or authority, in appropriate cases, or the Government within those territories, directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the fundamental rights.

Secondly, a new Article numbered 35-A, is added to Part III of the Indian Constitution, by the Constitution (Application to Jammu and Kashmir) Order, 1954. Article 35-A stipulates :

> Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law hereafter enacted by the Legislature of the State,-
>
> (a) defining the classes of persons who are, or shall be, permanent residents of the State of Jammu and Kashmir; or
>
> (b) conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions as respects:
>
> (i) employment under the State Government;
>
> (ii) acquisition of immovable property in the State;
>
> (iii) settlement in the State; or
>
> (iv) right to scholarships and such other forms of aid as State Government may provide;
>
> shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provisions of this Part.

Article 35-A, in effect, saves all such laws which are in force in the State, and which define the Permanent Resident of the State and confer on them special rights and privileges in regard to the employment under State Government, acquisition of immovable property in the State, settlement in the State, and the grant of scholarships and such other forms of aid as the State Government provides, from being declared void on the ground that such alws take away or abridge the Fundamental Rights, conferred on the citizens of India. Article 35-A further reserves the right to the State Legislature to enact any law to define the Permanent Residents of the State and confer upon them special rights and privileges with regard to the matter of employment, acquisition of immovable property, settlement in the State and grant of scholarship and other aids the State Government provides. Laws made by the State Legislature in pursuance of Article 35-A are not deemed to be void on the ground that they violate or abridge the Fundamental Rights.

Evidently Article 35-A encouches provisions, which are severely pernicious and vest in the State Legislature wide powers to :

(i) confer upon the Permanent Residents of the State special rights and privileges in terms of employment under the State Government, acquisition of immovable property in the State, settlement in the State and the scholarships and other forms of aid provided by the State Government, to the exclusion of the citizens of India, who reside in the State but are not defined as the Permanent Residents of the State;

(ii) exclude Permanent Residents of the State or sections of the Permanent Residents of the State from the definition of the Permanent Residents, and to deprive them of the rights and privileges the Permanent Residents of the State enjoy;

(iii) include, Indian citizens or section of Indian citizens within the definition of the Permanent Residents of the State to the exclusion of other Indian citizens.

Section 35-A allows the State Legislature to define the class of Permanent Residents and provide the Permanent Residents special rights and privileges to the exclusion of the other people of the State who are not the Permanent Residents of the State. There is wide scope for the

State Legislature to enact any discriminatory legislation, and to deprive any section of the people of the State from the rights and privileges which they are entitled to as the Permanent Residents. The State legislature is empowered to include any person, even if he were not a citizen of India within the definition of the Permanent Residents of the State from any such definition. There is an inherent conflict between the rights conferred on the people of the State and the provisions of the Constitution of the State which resort to classifications on grounds of community, region, religion and class, and the successive State Governments have actually used to channelise patronage into lines preferred by them.

The authority vested in the State Legislature to define the classes of people, which are entitled to special rights and privileges violates the spirit of the Constitution of India, which vests no authority with the Government of India or the governments in the Indian States, to determine the scope of the fundamental rights guaranteed by the Constitution of India. Rights are fundamental only in case they are placed out of the reach of the government and that is accomplished by Article 13 of the Constitution of India. So long as Article 13 is applicable to the Jammu and Kashmir State, universal limitations are imposed on any authority within the State including the State Legislature to enact discriminatory legislation in accordance with the provisions of Article 35-A of the Constitution of India or the provisions of the Constitution of the State.

Union Government

The provisions of the Constitution of India, with regard to the Union Government, which are embodied in Part V of the Constitution, are applicable to the Jammu and Kashmir State with certain reservations. The legislative competence and the executive authority of the Union Government is extended to the subjects which are placed within the ambit of the Union Government in accordance with the scheme of the division of powers between the Union and the State of Jammu and Kashmir, envisaged by Article 370. Ordinarily, therefore, the authority of the Union Government and the jurisdiction of its instrumentalities, operate throughout the State within the specified limits. The provisions of the Constitution with regard to the organisation of the Union executive are applicable to the State without any reservations. The provisions with regard to the composition of the Union Parliament are applicable to the State with an exception that the State is allocated a fixed number of six

seats in the Lok Sabha and the delimitation of constituencies for the election to the Lok Sabha is made by the Delimitation Commission under the Delimitation Commission Act.

Supreme Court

The provisions of the Constitution of India with regard to the Supreme Court of India are applicable to the State with three exceptions :

(i) the Court is not vested with the jurisdiction of the Federal Court in regard to the Jammu and Kashmir State;

(ii) the appellate jurisdiction of the Court cannot be enlarged by the Parliament without having received a request to that effect from the State; and

(iii) in regard to the Jammu and Kashmir State the Parliament is not empowered to confer on the Supreme Court powers to issue directions, orders and writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certioriari for purposes other than the enforcement of the fundamental rights.[17]

Subject to these reservations, the jurisdiction of the Supreme Court extends to Jammu and Kasmir in all its aspects, including the authority to enforce the fundamental rights envisaged by the Constitution of India and applicable to the State. The original jurisdiction of the Court extends to all disputes between the Jammu and Kashmir State and the Union of India, between the State with other States and the Union of India and between the State and the other States of India. The appellate jurisdiction of the Supreme Court extends to all constitutional, civil and criminal cases adjudicated upon by the lower courts, including the High Court of Jammu and Kashmir. Law declared by the Supreme Court is binding in the territories of India including the State of Jammu and Kashmir[18]

The Supreme Court is empowered to review laws made by the State Legislature and the administrative action undertaken by the State Government. The power of the judicial review, the Court exercises in regard to Jammu and Kashmir, has wider implications than those of the power of review which the Court exercise in regard to the other states in India. The Court exercises the power to ascertain whether any modifications

introduced by Article 370, by the orders promulgated by the President of India, are consistent with the provisions of the Constitution of India. The Court has also the power to ascertain whether the provisions of the Constitution of Jammu and Kasmir and amendments made in the Constitution of Jammu and Kashmir are consistent with the provisions of the Constitution of India. The Court has also the power to ascertain whether legislation and administrative action undertaken by the State Government is in consonance with the provisions of the Constitution of India as well as the Constitution of Jammu and Kashmir. Lastly, the Court has the power to review the decisions of the High Court of Jammu and Kashmir State. The power of judicial review exercised by the Supreme Court, therefore extends to :

(i) Application (Jammu and Kashmir) Order, promulgated by the President of India, modifying the operation of the provisions of Article 370;

(ii) the provisions of the Constitution of Jammu and Kashmir and the amendments made to it;

(iii) the instruments created by the Constitution of Jammu and Kashmir;

(iv) the legislation undertaken by the Legislature of the Jammu and Kashmir State; and

(v) the administrative action undertaken by the State Government.

Services

The provisions of the Constitution of India with regard to the services do not apply to the Jammu and Kashmir State, except in regard to the powers of the Parliament to create one or more all India services common to the Union and the States and regulate and recruitment and conditions of service of any such services. Article 312 of the Constitution of India empowers the Parliament to create new all India services and regulate the conditions of service in such services, provided the Council of States adopts a resolution by a two-third majority of its members present and voting to that effect. The services classified as the Indian Administrative Service and the Indian Police Service are deemed to be

services created by the Parliament. The provisions with regard to the organisation and powers of the Union Public Service Commission are applicable to the State without any limitations.

Elections

The provisions of the Constitution of India with regard to the election are applicable to Jammu and Kashmir with certain major modifications. The superintendence, direction and control of the preparation of the electoral rolls, conduct of all elections to the Parliament and to the Legislature of the State and the election to the offices of the President and Vice-President, are vested in the Election Commission of India. However, the provisions of the Constitution of India, which forbid the exclusion of any person from the electoral rolls on account of religion, race, caste or sex, are not applicable to Jammu and Kashmir. The provisions of the Constitution of India that law made by the Parliament in regard to the delimitation of the constituencies cannot be called into the question in any court of law, do not apply to the State. The limitations imposed by the Constitution of India, on courts to hear cases of elections, are also not applicable to Jammu and Kashmir. The Constitution of Jammu and Kashmir embodies provisions for the electoral rolls and the delimitation of the constituencies and the power of the courts to hear cases about the elections. The Constitution of Jammu and Kashmir provides for a general electoral roll for every territorial constituency and no person is liable to be excluded from any electoral roll on the ground of religion, race, castes or sex. The Constitution of Jammu and Kashmir provides for adult sufferage and every permanent resident of the State, who is of eighteen years of age or more, is entitled to be registered as a voter at any election. The Constitution of the State empowers the State Legislature to make laws in regard to the delimitation of the constituencies, preparation of the electoral rolls and the appointment of election tritunals, and all other "matters necessary for securing the due constitution of the two houses". The Constitution of the State further provides that the validity of any law made by the State Legislature in connection with the election and the validity of the elections of either House of the Legislature is not subject to be questioned in any court.[19]

Emergency Powers

The Constitution of India, vests with the President of India extraordinary powers to deal with emergencies arising out of war, aggression,

threat of war or internal disturbances, constitutional breakdown in the States and the breakdown of the financial stability. The Constitution of India empowers the President to impose a state of emergency in case :

(i) the security of India is threatened by war or threat of war, aggression or internal disturbances;

(ii) the constitutional government in the States suffers a breakdown; and

(iii) the financial stability and the credit of India is threatened.

The provisions of the Constitution of India arising out of war, aggression and internal disturbances, are applicable to the Jammu and Kashmir State with the exception that the proclamation of emergency made on grounds of internal disturbance can have effect in relation to the Jammu and Kashmir State after the concurrence of the Government of the State is sought or a request is made by the Government of the State that the effect of the proclamation be extended to the State.

In case of the emergency arising out of war, aggression and internal disturbance :

(i) the Union Government is empowered to issue administrative directions to Government of Jammu and Kashmir;

(ii) the Parliament is empowered to legislate on the residurary powers vested with the Jammu and Kashmir State, by virtue of Article 370;

(iii) the President of India is empowered to modify the provisions pertaining to the allocations of revenues between the Union and Jammu and Kashmir;

(iv) the President of India is empowered to restrict or suspend the enforcement of the fundamental rights in the State.[20]

The provision of the Constitution of India with regard to the emergency arising out of constitutional breakdown in the States is applicable to Jammu and Kashmir without any exception or reservation. Accordingly, the President of India, being satisfied that the government of

the State cannot be carried on in accordance with the Constitution, is entitled to assume the powers of the State Government, empower the Parliament to exercise the powers of the State Legislature, and make laws and delegate powers to sanction expenditure in case the House of the People is not in session. The emergency arising out of constitutional breakdown in the State can be extended a period of three years.

The provisions of the Constitution of India with regard to emergency powers of the President, were drastically amended by the Forty-Fourth Amendment to the Constitution of India. In accordance with the Forty-Fourth Amendment the emergency arising out of internal disturbance can be proclaimed by the President only if their is armed rebellion and it poses a threat to the security of the country. Secondly the emergency arising out of constitutional breakdown can remain in force for six months to a maximum period of one year. The Forty-Fourth Amendment to the Constitution of India has not been made operative in regard to the Jammu and Kashmir State. The provisions of Article 356, which envisage the provisions with regard to constitutional breakdown apply to Jammu and Kashmir, as they were envisaged prior to the Forty-Fourth Amendment to the Constitution of India.

The President's powers to proclaim an emergency arising out of financial instability of India cannot be extended to the Jammu and Kashmir State. The application of Article 360, which envisages the provisions pertaining to the financial emergency arising out of financial instability, is not extended to the State.

Amendment

The provisions for the amendment of the Constitution of India are envisaged by Article 4, 169, 239-A and Article 368 of the Constitution. Article 4 provides for the creation of new states and the reorganisation of the existing States. Article 169 provides for the creation and the abolition of the second chambers in the State Legislatures. Article 239-A provides for the amendment of the provisions pertaining to the administration of the Union territories. Article 368 embodies provisions for the amendment of the remaining provisions of the Constitution of India.

Article 4 and Article 239-A of the Constitution of India are applicable to Jammu and Kashmir without any reservation or exception.

Article 169 is not applicable to the State. Article 368 is applicable to the Jammu and Kashmir State with a specific limitation that no amendment in the Constitution of India can have effect in relation to the Jammu and Kashmir State, unless the amendment is applied to the State by an order promulgated by the President with the concurrence of the State Government.[21]

Official Language

The provisions of the Constitution of India with regard to Official Language apply to the State of Jammu and Kashmir only in so far as they relate to :

(i) official language of the Union;

(ii) official language for communication between the Union and the States; and

(iii) the language in which the proceedings of the Supreme Court are conducted.[22]

The Constitution of Jammu and Kashmir makes provisions for the official language of the State. Urdu is recognised as the official language of the State, though English continues to be used as the official language until the State Legislature provides otherwise. The regional languages recognised by the Constitution of Jammu and Kashmir are : Kashmiri, Dogri, Balti, Dardi, Punjabi, Pharai and Ladakhi.

References

1. Constitution (Application to Jammu and Kashmir) Order, 1954.
2. Constitution of India; Part IV.
3. Ibid.
4. Ibid. Article 368.
5. Ibid. Article 356.
6. Constitution of Jammu and Kashmir, Part V.
7. Constitution (Application to Jammu and Kashmir) Order; 1954, Para 15.
8. Constitution of India, Article 3.
9. Constitution (Application to Jammu and Kashmir) Order, 1954, Proviso Para 2.
10. Ibid, Para 3(b); The laws made by the Parliament of India under Article II are applicable to the State; D.D. Basu, *Commentary on the Constitution of India;* p. 89.
11. Constitution of Jammu and Kashmir, Part III; see also, Notification No. IB - L/19895, issued by Maharaja Hari Singh 27 June, 1932.

12. Constitution of India Article 12; Election Commission of India V. Venkata Rao AIR 1953 Sc210; Constitution (Application to Jammu and Kashmir) Order 1954, Para 32 (2) 9.
13. D.D.Basu; *Commentary on the Constitution of India;* p. 53; Janki Prasad Parimoo V. State of Jammu and Kashmir; I.S.C.C. p. 43; Makhan Lal Waza V. State of Jammu and Kashmir, 1971, ISSCC. 749; Triloki Nath V. State of Jammu and Kashmir, ISCT. 1969.
14. Constitution (Application to Jammu and Kashmir) Order, 154, Para IV (c)
15. Ibid. para 5.
16. V.N. Shukla; *Constitution of India;* p. 116; Constitution (Application of Jammu and Kashmir) Order, 1945, Para 3(c).
17. Ibid. Para 5.
18. Ibid.
19. Ibid.
20. Ibid. Para 13 (a)
21. Ibid. Para 15.
22. Ibid. Para. 12.

Chapter VI

Division of Powers

The Indian federal organisation envisages a division of powers between the Union Government and the Constituent Units : the States, in statutarily guarranted terms. The powers vested with the Union Government as well as the powers exercised by the State Governments are plenary and derived from the Constitution of India and cannot be abrogated by the Union or the States. With exceptions, which provide for certain defined circumstances, the Union Government and the State Governments exercise powers with their respective jurisdiction which is defined by the Constitution.

The division of powers is embodied in an elaborate scheme under which the legislative, administrative and financial powers of the Union Government and the State Governments are enumerated in detail. The Constitution provides for a concurrent area of jurisdiction in legislative sphere, subject to the condition that the authority of the Parliament to legislate on the subjects included in the concurrent area is recognised paramount.

A characteristic feature of the division of powers, the Indian federal organisation incorporates, is that all residuary powers of legislation are retained by the Union Government. The Constitution of India, vests exclusive powers with the Government of India, to legislate in respect of any matter, in addition to the subject included in the Union List, which is not enumerated in the State List and the Concurrent List.[1]

The division of powers between the Union and the State of Jammu and Kashmir is determined within the scope of Article 370 of the Constitution of India as amended by the various Constitution (Application to Jammu and Kashmir) Orders, promulgated by the President of India from time to time. In its original form Article 370, did not provide for the application of the provisions of the Constitution of India, with regard to the state-centre relations, including the Seventh Schedule. Accordingly the powers of the Parliament to legislate were limited to :

(i) matters in the Union List and the Concurrent List, which were enumerated in the Instrument of Accession;

(ii) matters, in the Union List and the Concurrent List, which in consultation with the State Government were declared by the President to correspond to the matter specified in the Instrument of Accession;

(iii) such other matters in the Union List and the Concurrent List, which were specified by the President of India with the concurrence of the State Government.[2]

The scheme of the division of powers embodied in Article 370 was drastically modified in 1954, when the President of India promulgated the Constitution (Application to Jammu and Kashmir) Order of 1954, and Part XI of the Constitution of India together with Seventh Schedule was made applicable to the State. The provisions of Part XI of the Constitution of India deal with the legislative and administrative relations of the State. The application of Part XJ of the Constitution of India brought the division of powers between the Union and Jammu and Kashmir in line with the federal division of powers envisaged by the Constitution of India. The subsequent Presidential Orders further defined the areas of authority of the State and the Union, pruning and modifying the reservations imposed upon the application of the Part XI of the Constitution of India to the State, which included the application of division of financial powers between the Union and the State, Part XI enumerated. Most to the reservations and exceptions saved certain subjects in the Union List and the Cocurrent List from the jurisdiction of the Union and reserved them for the State and secured the State Legislative, administrative and financial powers, which in case of the other Indian States were vested with the Union Government. Many of the reservations and exceptions,

including those which vest the residuary powers in the State, are still operative. Thus the powers exercised by the Union in relation to the State, pertain to subjects in the Union List and the Concurrent List, with regard to which the provisions of the Seventh Schedule are made applicable to the State. All the residuary powers are vested with the State.[3]

Legislative Relations

The Constitution of India follows the principle in accordance with which, all matters of national importance are vested with the Union and matters of local importance are exercised by the States. The content and nature of the powers of national importance and local importance, was determined by the Constituent Assembly of India, in which the British Provinces and the acceding States were represented on the basis of the ratios of population and to which the Governments of the acceding States had delegated the power to do so.

The Constitution of India enumerates elaborately the legislative powers delimiting subjects for the competence of he Union and the States. Besides the exclusive legislative powers that the Union and the State Legislatures are given, concurrent authority of legislation is vested in the Union and the State Legislatures over a number of specified subjects. The provision of the Seventh Schedule are applicable to the State of Jammu and Kashmir in respect of the Union List and be Concurrent List with certain exceptions. The Union is competent to legislate in respect of the Jammu and Kashmir State with regard to the following subjects in the Union List:[4]

(i) Defence of India and every part thereof, including preparation for defence and all such acts as may be conducive in times of war, its prosecution and after its termination, effective demobilisation; naval military and air forces and other armed forces of the Union; administration of cantonements; naval, military and air-force works; arms firearms, ammunition and explosives; atomic energy and mineral resources necessary for its production; industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war;

(ii) Foreign affairs and all matters which bring the Union into relation with foreign countries; diplomatic and consular and trade representations; United Nations Organisation; Participation in international conferences, associations and other bodies and conventions with foreign countries; war and peace, foreign jurisdiction, citizenship, naturalisation and aliens, extradition, immigration to and emigration from India; pilgrimages to places outside India; piracies and crimes committed on the High Seas or in the air; offences against the Law of Nations committed on land or the High Sea or in air;

(iii) Railways; highways, declared by or under law made by the Parliament as national Highways; shipping and navigation on inland waterways declared by law made by the Parliament as national waterways, mechanically propelled vessels on waterways; light houses including light ships, beacons and other provisions for the safety of shipping and aircraft; ports declared by or under law, made by the parliament to be major ports, authorities ; port including their delimitation and the constitution of port quarrantine including hospitals with seamen's and maritime hospitals; airways, aircraft and air navigation, aerodromes, aeronautical education and training provided by the States and other agencies; carriage of passengers and goods by railways, sea or air, by national waterways; posts and telegraphs, telephones, wireless, broadcasting and other forms of communication;

(iv) property of the Union and the revenues therefrom; public debt of the Union; currency, coinage, legal tender foreign exchange, foreign loans, Reserve Bank of India, Post Office Saving Bank; lotteries; trade and commerce with foreign countries; import and export across custom frontiers; custom frontiers; inter-state trade and commerce, incorporation, regulation and winding up of trading corporation, including banking insurance, financial corporation, except cooperative societies; incorporation, regulation, and winding up of corporations whether trading or not, banking; bills of exchange cheques, promissory notes and other instruments; insurance; stock exchange and future markets; patents, inventions and designs, copy right, trade marks and merchandise marks, weights and measures, quality of goods to be exported out of India or transported from one State to another;

(v) Industries declated by Parliament by law to be expedient in the public interest; regulation of and development of oil fields and mineral oil resources, petroleum and petroleum products; other liquids and substances declared by Parliament by law to be inflammable; regulation of mines and mineral development to the extent declared by law made by the Parliament to be expedient in public interest; labour and safety in mines and oil fields;

(vi) Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament in the public interests; fishing and fisheries beyond territorial waters; manufacture and distribution of salt by Union agencies, regulation and control of manufacture, supply and distribution by other agencies; cultivation, manufacture and sale for export of opium;

(vii) Industrial disputes concerning Union employees;

(viii) National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, the Indian War Memorial and other institutions financed by the Government of India; Benares Hindu University, Aligarh Muslim University; the Delhi University and any other institution declared by parliament by law to be institutions of national importance; institutions of scientific and technical education, financed by the Government of India, ;wholly or in part, and declared by thç Parliament by law to be institutions of national importance; Union agencies for professional, vocational or technical training, including training of police officers, the promotion of special studies and research, and scientific and technical assistance in the investigation and detection of crime; coordination and determination of standards in institutions for higher education or research or scientific or technical institutions; ancient and historical monuments and archaeological rights and remains declared by Parliament to be of national importance; the Survey of India, the Geological, Botanical, Zoological and Anthropological Surveys of India; Metereological Department;

(ix) Census;

(x) Union Public Services; All India Services; Union Public Service Commission; Union Pensions; pensions payable by Government of India or out of the Consolidated Fund of India;

(xi) Elections to Parliament; to the State Legislatures and to the offices of the President and Vice President; the Election Commission;

(xii) Salaries, allowances of the members of the Parliament Chairman and the Deputy Chairman of the Council fo States and Speaker and the Deputy Speaker of the House of the People; powers, privileges and immunities of each House of Parliament and of the members and the Committees of each House; enforcement of attendance of persons for giving evidence or producing documents before the Committee of Parliament or Commissions appointed by the Parliament;

(xiii) Emoluments, allowances, privileges and rights in respect of leave or absence of the President and Governors, salaries and allowance of the Ministers of the Union; the salaries and allowances and rights in respect of leave and other conditions of the service of the Comptroller and Auditor General of India; Audit and Account of the Union and the States;

(ix) Constitution, organisation, jurisdiction and powers of the Supreme Court, including contempt, and fees taken, persons entitled to practice; High Courts; servants of the High Courts; persons entitled to practice in the High Courts;

(xv) extension and regulation of the powers of police force belonging to any State or to any area outside the State or to railway areas outside the State; Inter-State quarrantine;

(xvi) Taxes on income other than agricultural income; duties of custom including export duties; duties on excise on tobacco and other goods manufactured or produced in India except alcoholic liquor for human consumption and opium, Indian hemp and other narcotic drugs; corporation tax; Taxes on capital value of assets,exclusive of agricultural land of individuals and companies, taxes on capital of companies; estates duty in respect of succession to property other than agricultural land; terminal taxes on goods or passengers,

carried by rail, sea or air; taxes on railway fares and freights; taxes other than stamp duties on transaction in stock exchanges and future markets; rates of stamp duty in respect of bills of exchange, cheques, promisory notes, bills of landing letters of credit, policies of insurance transfer of shares, debentures, proxies and receipts; taxes on sale and purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-state trade or commerce;

(xvii) offences against laws with respect to any of the matters in the Union List; inquiries, surveys and statistics in the Union List, jurisdiction of Courts other than Supreme Court with respect to any of the matters in the Union List; Admirality Jurisdiction; fees in respect of any matters in the Union List but not including fees taken in any Courts;

(xviii) Prevention of activities directed towards, disclaiming, questioning or disruption the sovereignty and territorial integrity of India or bringing about secession of a part of territory of India from the Union or causing insult to the Indian National Flag, the Indian National Anthem and the Constitution of India.

In the Concurrent List, the subjects over which the Union and the State of Jammu and Kashmir exercised concurrent jurisdiction, are specified as follows:[5]

(i) removal of prisoners, accused persons, persons subjected to preventive detention, from one State to another State.

(ii) Administrators General and official trustees;

(iii) Lunacy and mental deficiency, hospitals for the treatment of lunatics and mentally deficient;

(iv) adulteration of food stuffs and other goods; drugs and poisons;

(v) trade unions; industrial labour disputes, social security and insurance, unemployment and employment; labour welfare, conditions of work; provident funds, employer's liability; workmen's compensation; invalidity and old age pensions and maternity benefits; vocational and technical training of labour;

(vi) legal, medical and other professions; vital statistics including registration of births and deaths;

(vii) Trade and commerce; production, supply and distribution of the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in Public interest and imported goods, foodstuffs including edible oilseeds and oils, cattle fodders, oil cakes and other concentrates, raw cotton and cotton seeds and raw jute;

(viii) Mechanically propelled vehicles, including the principles on which taxes on such vehicles are to be levied; factories;

(ix) Newspapers, books and printing presses;

(x) inquiries and statistics;

(xi) jurisdiction and powers of all Courts;

(xii) fees in respect of any of the matters specified in the List and but not including the fees taken in any Court.

The powers which are reserved for the State include the subjects in the Union List and the Concurrent List which are saved application in relation to the State along with all other residuary powers, including the subjects in the State List. The provisions of the State List of the Seventh schedule are not applicable to the State. Entry 97 of the Union List, which vests the residuary powers of legislation in the Parliament, is not application to the State. The powers reserved for the State, therefore, include :

(i) the powers enumerated in the Union List but saved application in respect of Jammu and Kashmir;

(ii) Powers enumerated in the Concurrent List but saved application in respect of Jammu and Kashmir;

(iii) subjects enumerated in the State List; and

(iv) residuary powers.[6]

The powers vested with the Union Government and the States are mutually exclusive, but the Constitution of India provides for certain exceptions, in which the Union is empowered to legislate on the subjects enumerated in the State List. In respect of Jammu and Kashmir State as well, the Union is empowered to legislate on the powers vested with the State. However, Article 249 of the Constitution of India is not applicable to the Jammu and Kashmir and the Parliament cannot assume powers to legislate on the residuary powers vested in the State.[7] The Parliament is empowered to legislate on the residuary powers vested in the State to implement treaty obligations and in case a state of emergency is in operation.

Article 246 and Article 254 of the Constitution of India are applicable to the Jammu and Kashmir State without any reservations. With regard to the laws made by the Parliament in its exclusive powers to legislate in respect of the Union List, the precedence of Parliament is presumed. In case of a conflict between the laws made by the Parliament and the State Legislature on a subject placed within the concurrent jurisdiction of the Union and the State, the law made by the Parliament prevails. Legislation undertaken by the State Legislature whether anterior or posterior to the Union legislation, becomes void to the extent of its inconsistency.

The Constitution (Application to Jammu and Kashmir) Orders promulgated by the President of India in 1954, and subsequently, have brought the State within the ambit of the legislative relations between the Union and the States envisaged by the Constitution of India. However, the exceptions and reservations, specifically with regard to the residuary powers, leaves a wide field of legislative authority to the Jammu and Kashmir State. Residuary powers are a vital part of the legislative competence, which in the Indian federal organisation, are vested with the Union Government. The elaborate enumeration of the powers, the Seventh Schedule underlines, adds to the importance of the residuary powers, mainly because any such enumeration can be far from exhaustive and the State Government has the opportunity to block a national decision on important matters of government, which may arise from time to time. In such a case, the Jammu and Kashmir State retains the initiative to legislate on matters, which may conflict with national consensus and force the Parliament to amend Article 370, since the State Government would not be prepared to give concurrence to a change in the operation of Article 370, which the President of India would seek to bring about.

Administrative Relations

The State Governments are ensured exclusive and independent administrative authority over the subjects in respect of which they exercise legislative authority.

Since the administrative operations involve delegation of powers in decision making, with ramifications far wider than those involved in legislation, the Constitution of India has devised techniques which ensure the Union a measure of control over the administrative competence of the State. "The Constitution has devised techniques of control over the states by the Union to ensure that the State Governments do not interfere with the legislative and executive policies of the Union and also to ensure that the efficiency and strength of each individual unit which is essential for the strength of the Union."[8]

To ensure smooth and satisfactory function of the administrative process of the Union and the States and their coordination at the two levels the Constitution of India underlines the following provisions;

(i) the executive powers of the State are so exercised as to ensure compliance with the laws made by the Parliament ;

(ii) the Union is empowered to issue directions to the State Governments to ensure that their administrative operations do not impede and prejudice the executive powers of the Unions;

(iii) the Union is empowered to issue directions to the State Governments to remove any obstacles and difficulties for a Union agency to function in the States;

(iv) the Union is empowered to issue directions the States in respect of maintenance of the means of communication of national importance and the protection of railways;

(v) full faith and credit is given to public acts, records and judicial proceedings of the Union in all parts of the Union territory;

(vi) the Union Government is empowered to deal with the waters of inter-state rivers and river valleys;

(vii) the Union Government is empowered to settle inter-state disputes.

The provisions of the Constitution of India with regard to administrative relations between the Union and States are applicable to Jammu and Kashmir with certain modifications. The administrative competence of the State Government extends to all the subjects placed within the ambit of the Legislative authority of the States.

However, the administrative powers exercised by the Jammu and Kashmir State are subject to the limitations which the Constitution of India imposes on the other States, with certain modifications. The State Government is also required to exercise its administrative authority in such a way that compliance with the laws made by the Parliament is ensured. The Union Government is empowered to give the State Government such directions as are considered necessary for this purpose. By a specific modification in respect of Jammu and Kashmir, the State Government is required to exercise its executive power in a manner which facilitates the function of the Union Government in the State. The State Government is also required to acquire and requisition property on behalf of the Union and transfer property to the Union if it belongs to the State. Article 256 of the Constitution of India, in its application to Jammu and Kashmir, is appended with a new clause by the Constitution (Application to Jammu and Kashmir) Order 1954, which stipulates;

> The State of Jammu and Kashmir shall so exercise its executive power as to facilitate the discharge by the Union of its duties and responsibilities under the Constitution; and in particular, the said State shall, if so required by the Union, acquire or requisition property on behalf of and at the expense of the Union, or in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India.

Besides the powers of the Union to ensure compliance with the laws made by the Parliament, the State Government is also subject to the obligation to refrain from acts which impede and hamper the executive power of the Union. The Union Government is empowered to give directions to the State Government to ensure that the administrative operations in the State do not impede and obstruct the function of the Union in the States. The Union can also give directions to the State Government in regard to the construction and the maintenance of

national or military importance and protection of railways. The Union Government is also empowered to declare highways or waterways as national highways. The Union Government is also empowered to construct and maintain means of communication as a part of its function with respect to naval, military and air force works.

Provisions are incorporated in Article 365 of the Constitution of India, for drastic remedial measures, which the Union is empowered to take in case State Governments fail to comply with the directives it has given to them. In case a State fails to comply with the directions given by the Union, the President is empowered to impose a state a emergency in the State under Article 356 of the Constitution of India. Article 356 provides for the imposition of a state of emergency in a State an consequence of a constitutional breakdown. During the operation of the emergency, the President is entitled to assume all or any powers of the State Government and also order that the powers of the State Legislature be exercised by or under the authority of the Parliament.

Article 365 of the Constitution of India is not applicable to the Jammu and Kashmir State and therefore, no remedies are available to the Union if the State Government fails to comply with directions, the Union Government issues to the State. The powers of imposing a state of emergency are drastic and are meant for grave and serious situations; nevertheless, they are essential to ensure cooperation of the States with the administrative decisions of the Union Government. Without any constitutional remedies, the administrative powers vested with the Union in respect of Jammu and Kashmir, are hollow and deprived of their content.

The provisions of the Constitution of India, applicable to the Jammu and Kashmir State, empower the Union Government to entrust the State Government and its officers, executive functions of the Union, with the consent of the State Government. The Union Government is also empowered to impose duties on the Government of the State and is officers, through any of its laws applicable to the State. The Governor of the State is also entitled to entrust the State Government or its officers, functions of the Union Government with the consent of the Government of India. Such an action can be taken by the Governor in respect of any matter over which the administrative authority of the State extends.

Provisions of Article 261 of the Constitution of India require the State Governments to give full faith and credit to public acts, records and judicial proceedings of the Union. The manner in which these acts and records are proved and their effect determined is laid down by law made by the Parliament. Article 261 is applicable to the Jammu and Kashmir State with certain modifications. Article 261, as it is applicable to Jammu and Kashmir stipulates;[9]

(i) Full faith and credit shall be given to throughout the territories of India to public acts, records and judicial proceedings of the Union and of every State.

(ii) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (i) shall be proved and the effect thereof determined, shall be provided by law.

(iii) Final judgments or orders delivered or passed by Civil Courts in any part of the territory of India shall be capable of execution within the territory according to law.

In respect of the Jammu and Kashmir State therefore, the manner in which public acts, records and judicial proceedings are proved and their effect determined, is provided by law and not by "law made by Parliament." The power to determine the manner in which the acts, records and proceedings are proved and their effect determined is vested in the Courts and not the Union Legislature.

The Constitution of India provides for the appointment of an Inter-State Council to coordinate policy and action between the Union Government and the States. The Inter-State Council is appointed by the President of India. The Jammu and Kashmir State is also brought within the ambit of these provisions and is subject to the powers of the President. The Inter-State Council is entrusted with the functions to enquire into and advise upon disputes between the States, investigate and deliberate upon the subjects of mutual interest between the Union and the States and recommend measures for better coordination of policy and action with respect to the subjects of common interest.

Financial Relations

The financial powers of the Union Government and the Governments of the States are separately defined by the Constitution of India. No area of concurrent jurisdiction is left between the Union and the States, though provisions are available to empower the Union to levy and collect certain taxes and share certain tax returns with the States. In the allocation of resources between the Union and the States, the-Constitutionn classifies the exclusive State sources, the duties levied by the Union but collected and appropriated by the States and the duties levied by the Union and distributed between the Union and the States.

The division of financial powers underlined by the Constitution of India, envisages two distinctly separate schemes; the division of powers to tax and distribution of the revenues. The Constitution of India does not only envisage a plan for the patterns of division of taxable sources, it envisages a pattern of distribution of the revenue returns between the Union and the States. The Union and the States levy taxes within the orbit of their competence to tax but the division of revenues is based on the principle of their needs and requirements. This, in fact, accounts for the unusual constitutional provisions under which certain taxes included in the Union List are wholly or in part intended for the States and in certain cases their collection is entrusted to the States. The net proceeds assigned to the States are distributed among them on the principles recommended by the Finance Commission.

The division of taxing powers and financial resources between the Jammu and Kashmir State and the Union, follows the main principles of the patterns of allocations underlined by the Constitution of India. The sources enumerated for Union in the Union List are demarcated exclusively for the Union Government.

Provisions of the Constitution of India with regard to the taxes and duties levied by the Union and collected and appropriated by the States or taxes levied by the Union and divided between the Union and the States are applicable to Jammu and Kashmir as well. The reservation made in favour of the State is that entry ninety-seven of Union List is not applicable to the State and the residuary powers of taxation are not transferred to the Union as is the case with the other Indian States.

The division of sources and revenues between the Union and the Jammu and Kashmir State is divided by the Constitution (Application to Jammu and Kashmir) Order 1954, as follows :

Union Sources

(i) property of the Union; public debt of the Union duties of custom and export duties;

(ii) currency, coinage and legal tender; Post-Office saving Bank; corporation tax; duties of excise on tobacco and goods manufactured and produced in India; fees in respect of any of the matters in the Union List, but not including any fees taken in the Courts; lotteries;

(iii) posts and telegraphs, telephones, wireless, broadcasting and other communications; railway fares and freights;

(iv) stamp duty in respect of bills of exchange, cheques, promissory notes etc.

(v) Reserve Bank of India;

(vi) taxes on income other than agricultural land; duties in respect of succession to property other than agricultural land; terminal taxes on goods, passengers carried by railway, sea and air;

(vii) taxes other than stamp duties on transactions in stock exchanges and future markets; taxes on the sale or purchase of newspapers; taxes on capital value of assets exclusive of agricultural land of individuals and companies.

State sources

(i) Land revenue; taxes on agricultural income; taxes on land and buildings;

(ii) taxes on mineral rights subject to the limitations imposed by the Parliament relating to mineral development;

(iii) duties in respect of succession to agricultural land; estate duties in respect of agricultural land;

(iv) duties of excise on goods manufactured and produced in the States, such as alcohols, opium, narcotics and narcotic drugs;

(v) taxes on sale and consumption of electricity;

(vi) taxes on the entry of goods into local area for consumption, use or sale; taxes on sale, and purchase of goods other than newspapers; capital taxes; taxes on goods and passengers carried by road or on inland waterways;

(vii) fees in respect of any matters in the State List except the fees taken in any court; stamp duty in respect of documents other than those specified in the Union List; taxes on advertisements except those published in the newspapers;

(viii) taxes on vehicles; taxes on animals and boats; tolls;

(ix) tolls, taxes on professions, trades, callings and employments, taxes on luxuries including taxes on entertainment, amusement betting and gambling;

Taxes levied and collected by The Union but assigned to the States

(i) Duties in respect of succession to property other than agricultural land; estates duty on property other than agricultural land; terminal taxes on goods or passengers carried by railway, sea or air; taxes on railway fares and freights; taxes other than stamp duties on transactions in stock exchanges and future markets;

(ii) taxes on the sale and purchase of newspapers and on advertisements published therein;

(iii) taxes on the sale and purchase of goods other than newspapers where such sale or purchase takes place in the course of inter-State trade and commerce.

Duties levied by the Union but collected and Appropriated by the State

Stamps duties and duties on excise on medical and toilet preparations mentioned in the Union List are levied by the Government of India and collected and appropriated by the State.

Taxes levied and collected by the Union but Distributed between the Union and the State

(i) taxes on income other than agricultural income;

(ii) Union duties of excise other than such duties of excise on medicinal and toilet preparations as are mentioned in the Union List and collected by the Government of India.

Grants-in-aid

Within the broad framework of the division of financial powers between the Union and the States, the distribution of revenue is made in favour of all States uniformly. However, due to regional disparities and economic stresses the financial needs of some of the States are more pressing than that of the other States. In order to meet exigencies arising out of the regional and economic disparities, the Constitution of India provides for a system of Grants-in-Aid to the States charged on the Consolidated Fund of India. The Grants-in-Aid are actually the final balancing instrument of the resources of the States with their manifold functions particularly services. The Parliament is empowered to make grants every year to the extent deemed necessary. The grants are fixed in accordance with the recommendations of the Finance Commission. The Jammu and Kashmir is covered by the Constitutional provisions pertaining to the Grants-in-Aid. The Second Finance Commission in its interim report covered the financial integration of the State.[10]

Finance Commission

The provisions of the Constitution of India with regard to the appointment of the Finance Commission, are applicable to Jammu and Kashmir State and consequently the State also comes within the scope of the powers of the Commission. The Finance Commission is constituted every five years to advise the President of India with regard to the division of revenues between the Union and the States, Grants-in-Aid and other financial matters referred to the Commission by the Parlia-

ment. The Parliament is vested with the authority to determine by law the qualifications of the members of the Commission and the manner of their selection. The Commission is empowered to make recommendations on the following issues :

(i) distribution between the Union and the States of the net proceeds of taxes, which are to be, may be, divided between them and allocation between the States of the respective shares of such proceeds;

(ii) the principles which should govern the Grants-in-Aid of the revenues of the Consolidated Fund of India; and

(iii) any other matter referred to the Commission by the President in the interests of sound finance.

Immunity of Instrumentalities

The State of Jammu and Kashmir is also subject to the paramount power of the Union in the same manner as the other States are. No reciprocal immunity of instrumentalities is secured between the Union and the State. Instead the same determinatives and instruments which regulate the financial relations between the Union and the other Indian States, regulate the financial relations between the Union and Jammu and Kashmir State. The one aspect in which the financial relations between the Union and the State differ from financial relations between the Union and the other States is that the residuary powers of taxation are reserved for the State Government.

References

1. Constitution of India, Seventh Schedule.
2. Ibid. Article 370.
3. Constitution (Application to Jammu and Kashmir) Order, 1954.
4. Ibid Para.6.
5. Ibid Para.22.
6. Ibid Para,22(c).
7. Entry 97 of the Seventh Schedule of the Constitution of India.
8. Constitution (Application to Jammu and Kashmir) Order 1954, Para. 6 (bb).
9. D.D. Basu, *Commentary on the Constitution of India;* Vol. IV, Fourth Edition pp. 200-201.
10. Constitution (Application to Jammu and Kashmir) Order 1954, Para.6 (b).
11. Ashok Chanda; *Federalism in India;* 1965, p. 205.

Chapter VII

State Apart

The exclusion of the Jammu and Kashmir State from the constitutional organisation of India and its reconstitution into a separate political identity based upon the Muslim precedence had serious repercussions both inside and outside the State. Evidently, no stable and organic relationship between the Union and the State could be constructed on communal balances which the Conference leaders sought to establish. The leaders of the National Conference, consciously sought to exclude Jammu and Kashmir from the basic structure of the Indian Constitution, which in its broad framework established a federal partnership based upon division of powers between the Union and the States; described the scope and limits of authority of state power and the nature and extent of individual liberty and freedom and envisaged protection against discrimination of grounds of religion, caste and region and laid down legal remedies against arbitrary exercise of authority. The exclusion of the State from the constitutional organisation of India isolated the State from the mainstream of the Indian political development and in due course of time pushed it into a separate orbit of political operatives which ultimately isolated it from the rest of the country.

The political autonomy which the Constitution of Indian envisaged for the Indian States, was visualised by the framers of the Indian constitution, as a residue of political power and not as a function of subnational pluralism which characterised the Indian society. The Indian provinces which were organised within the Indian Union, by no means represented subnational identities with any distinct ethnic, cultural,

religious and linguistic identity; the Indian provinces were administrative units, forged by the British, by and large, on the basis of allocations in terms of political authority. The Princely State in India as well, did not represent any subnational identities; they were political arrangements, the British Paramountcy devised to integrate their territories into the broad organisation of British colonialism in India. So was the State of Jammu and Kashmir constituted, an agglomerate of distincty disparate peoples, Muslims, Hindus and the Buddhists, ethnically, culturally, and linguistly different from each other and demographically spread over vast reaches of broken country, stretching from the outskirts of the Shivaliks to deep Himalays of Ladakh and Baltistan.

The founding fathers of the Indian Constitution did not alter the basis of the administrative delimitation, the British Provinces underlined and where the Provinces or the States were integrated, into more viable units of Indian federal structure, the underlying principle followed was the same. The integration of the Indian States followed a process of consolidation, which was mainly political in character and determined more by geographical contiguity, administrative viability and economic advantage than the factor of ethnic, religious and cultural diversity. The Conferences leaders, however, visualised the autonomy of the State as a function of its subnational identity which they claimed for the State on the basis of its Muslim Majority character.

There is an inherent conflict between sub-national pluralism and political autonomy. Political autonomy is a residue of political authority and therefore, complementary to national integration. Sub-national pluralism is basically a function of ethnic, cultural, religious and linguistic separatism and consequently irresconcillable to national integration and nation-building. The Muslim League in India claimed a sub-national identity for the Muslims of India which in the long run led them to opt for separation from the Indian mainland.

The demand for recognition of the National identity of the Muslims in India based upon communal balances and population proportions and religious precedence found expression in the presidential address delivered by Mohamad Iqbal to the Muslim League in 1930, that "geographically contiguous units are demarcated into region which should be so constituted, with such territorial adjustment as may be necessary, that the areas in which the Muslims are numerically in a majority as in the North

Western and Eastern zones of India, should be grouped to constitute an Independent State in which the constitutent units shall be autonomous and sovereign''. The Muslim league, formally adopted the resolution of Pakistan in 1940, a decade after Iqbal demanded the constitution of an independent state constituted of the Muslim majority areas in India. In 1942, Mohamad Ali Jinnah claimed: ''We the Muslims in India are determined to attain our national freedom and independence by establishing our own independent sovereign states in the north western and eastern parts of the subcontinent which are our homeland and where we are in a majority.''

The quest for the separate identity of Jammu and Kashmir State, based upon the Muslim majority character of its population followed, almost the same course, the Muslim league had taken in India. As the irreconcilaibility between the communal balances, the National Conference sought to achieve and the imperatives of Indian unity came to surface, the Interim Government in the State disintegrated. The League demand for communal balances was supported by the British and Pakistan was created with their active connivance and help. The British were no longer the rulers in India and could not come to the support of the National Conference to enforce its claim. For sometime, Nehru accepted to recognise communal balances, the Conference leadership visualised, as the basis of the separate constitutional organisation of Jammu and Kashmir. But the political arrangements, the separate constitutional organisation of the State envisaged, did not last long and he readily approved the integration of the State into the constitutional organisation of India. The Conference leaders, who had accepted the accession of the State to India with many reservation, repudiated their commitment to the Indian unity, linked the Muslim majority character of the State with its accession and reclaimed the right of the Muslims in the State to determine its future disposition.

The Interim Government, headed by Sheikh Mohamad Abdullah was dissolved in August 1953, and a second Interim Government headed by Bakhshi Gulam Mohamad instituted in its place. Bakhshi was not opposed to the separate identity of State on the basis of its Muslim majority character, not did he support the secular integration of the State with the rest of the country but he did nor support the first Interim Government in its demand for a separate political organisation of the State

placed outside the political organisation of India. He was also opposed to the demand of the first Interim Government to link the autonomy of the state with its accession and refused to recognise the claim Sheikh Mohamad Abdullah and a section of the National Conference leadership made, that the Muslims in the State should be given the right to determine the future disposition of the State, before any alterations in the relations between the State and the Government of India were effected.

The second Interim Government, secured the approval of the Constituent Assembly of the State, to implement the Delhi Agreement, the first Interim Government had reached with the Government of India in 1952. In May 1954, the provisions of the Constitution of India, as envisaged by the Delhi Agreement were made applicable to the Jammu and Kashmir State and the State was brought within the constitutional organisation of India.

In 1955, Mirza Afzal Beg, who had been interned with Sheikh Mohammad Abdullah in August 1953, wrote to Bakhshi Gulam Mohamad from inside the jail, that Sheikh Mohamad Abdullah been dispossessed of his office by a conspiracy and demanded that he should be given an opportunity to clarify his stand in the Constituent Assembly. He was promptly released. In the Constituent Assembly, Mirza Beg delivered a frontal attack on India as well as the second Interim Government, headed by Bakhshi Gulam Mohamad, alleging that the Interim Government headed by Sheikh Mohamad Abdullah had been removed to bring about the merger of the State with India, which he and Sheikh Mohamad Abdullah opposed. Beg claimed that the accession of the State to India was subject to the approval of the Muslims in the State and so long the Muslims did not ratify it, no constitutional changes could be brought about in the special provisions which governed the relationship between the State and India. Shortly after, Mirza Beg, founded the All Jammu and Kashmir Plebiscite Front which committed itself to secure the Muslims in the State, right to self-determination and demanded a plebiscite to determine the final disposition of the State with regard to its accession in accordance with resolutions of the United Nations.

The special provisions envisaged by Article 370, did not embody any safeguards for any rights, specifically the right to equality of opportunities and protection against discrimination, right to freedom and right

to liberty. The Interim Government remained in power for a decade, before the Constitution of Jammu and Kashmir was finally framed in 1957. The special constitutional provisions envisaged by Article 370 were modified in 1954, and various rights envisaged by the Constitution of India were made available to the people of the State in a restricted measure. But the relief fell far short of the rights the people in the rest of the country enjoyed. Most of the rights extended to the State were hollowed of their pith and substance by the exceptions and reservations they were subject to. The right of the State Legislature to frame and construct rules and regulations to regulate the rights; the unfettered power and discretion to impose restrictions on the rights and determine the reasonability of such restrictions vested with the State Government, and the overriding operatives placed upon legal remedies and due process of law, left the rights with little significance and scope. Except for its redundant stipulations that the rights and relevant safeguards envisaged by the Constitution of India, were available to the people in the State, the Constitution of Jammu and Kashmir provided no alternate safeguards. For decades the partial application of the fundamental rights deprived the people in the State of their rights to equality and protection against discrimination and the rights to freedom and personal liberty.

The quest for Muslim identity based upon the Muslim Majority character of the State conflicted with tne secular integration of the Indian people, the Constitution of India envisaged. The communal balances which the Interim Government enforced, alienated the minorities, a little less than half the population of the State, from the National Conference and drove the Muslims to seek fresh guarantees to safeguard their isolation from India. As the years went by, the contradiction sharpenede and ultimately broke up the National Conference. With that was dissolved the support base, India had bought at a price, which had cost their freedom the people of the State, who wer not Muslims.

to liberty. The Interim Government remained in power for a decade, before the Constitution of Jammu and Kashmir was finally framed in 1957. The special constitutional position conferred by Article 370 was crystallised in 1954, and various rights contained [illegible] of [illegible] were made applicable to the people of the State in a modified manner. But the [illegible] and the notion of liberty that the people [illegible] was [illegible] curtailed. Most of the rights extended to the State were [illegible] at every point and [illegible] by the exceptions and reservations [illegible] subject to. The right of the State Legislature to frame and [illegible] rules and regulations to regulate the rights that it [illegible] and the [illegible] to impose [illegible] on the rights and to suspend the [illegible] of such rights along with the [illegible] power [illegible] and the overriding provisions passed against legal enactments and the process of law, all the rights were thus [illegible]. [illegible] restrictions and limitations that the rights and liberties [illegible] by the Constitution of India, were available to the people of the State. The Constitution of Jammu and Kashmir [illegible] on the people [illegible] the [illegible] of the [illegible] of the rights [illegible] and the [illegible] and [illegible]

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The powers to amend the provisions of Article 370, were vested with the Parliament of India, which was not subject to any limitation imposed by Article 370 or any other provision of the Constitution of India.

This book provides the authoritative account of the events which led to incorporation of Article 370 in the Constitution. Also all provisions of the article are elaborately analysed. This will prove an authoritative reference tool to students, teachers and researchers in the field of history, political science, law and polity besides the general readers.

Dr. M.K. Teng is a renowned Professor of Political Science. He headed the Deptt. of Political Science at the Kashmir University. A seasoned teacher and prolific writer, he has written many learned articles, published in professional journals of repute besides many outstanding books.

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